

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Overview

The regulations in this package involve three primary areas where the California Department of Social Services (CDSS) will now license and enforce several types of services for its clients: Enhanced Behavioral Supports Homes (EBSHs), Secured Perimeters, and Emergency Intervention. Each of these areas is discussed at greater length below, but largely all three are closely related because they will either automatically apply or are likely to generally apply to the expected increase in care for developmentally disabled individuals who are currently largely housed in the developmental centers operated by California Department of Developmental Services (DDS). As discussed in the statement of reasons for the EBSHs, the new law creating those homes specifically assigned both CDSS and DDS crucial roles in overseeing, licensing and enforcing regulations for the facilities. Therefore those roles are not only intertwined between those two departments, but also closely related to the roles of potential use of Secured Perimeters and/or Emergency Intervention in those new facilities. For that reason, these are all closely related regulations and best assessed and promulgated as a whole, rather than various pieces. And, as discussed below, since the new statutes call for emergency status for the EBSHs regulations, the additional crucial components regarding Secured Perimeters and Emergency Interventions have equal urgency and call for immediate promulgation.

Creation of the Emergency

In the past few years the Developmental Centers (DCs) have undergone scrutiny both financially as well as the assessment of the best nature of services for the developmentally disabled. 2012 Budget Trailer Bill language [Assembly Bill (AB) 1472] imposed a moratorium on admissions to DCs – except for individuals involved in the criminal justice system and consumers in an acute crisis needing short-term stabilization. The aging DC infrastructure, the moratorium on admissions and gradual decline in DC population, associated costs of operation, and the recent development of new community-based residential and service models capable of meeting the service needs of people with significant health and behavioral needs have all reduced the reliance on State-operated DCs.

Based on the above factors, since 1996, three large DCs and one state-operated community facility have undergone closure processes. In 2014, a statewide task force released their Plan for the Future of Developmental Centers in California making recommendations for the future of DC residents and DC land use. The plan's recommendations include the continuation of efforts to expand available services and supports in the community, allowing DC residents to transition into community living options that best meet their needs.

Most recently, the 2015 Budget Trailer Bill [Senate Bill (SB) 82] enacted several provisions affecting the DCs, including the requirement for DDS to submit to the Legislature a plan or plans to close one or more DCs. Such plan was prepared and submitted to the Legislature on October 1, 2015 to close Sonoma DC by 2018 and subsequent plans will be developed to close Fairview DC and the Porterville DC General Treatment Area.

In light of this overall transition and need for placement of DDS consumers into community based facilities, recent legislation has created the EBSHs, and orchestrated the use of Secured Perimeters in facilities which may house DDS consumers. In addition, the proposed regulations for Emergency Intervention is appropriately placed into this package, as it is foreseen both by CDSS as well as DDS that use of such intervention as well as the dire need for further regulatory control of such will often involve the very same facilities that are under regulation for EBSHs and/or Secured Perimeters. The common theme among all of these regulations is to adequately serve and protect the public as well as the individuals who will be utilizing these newer private services, rather than the closely monitored and controlled services they have previously received from the closing DCs. Further, because the individuals served under these regulations will have behavioral challenges which go beyond the typical ones currently overseen by the facilities currently regulated by the CDSS, these emergency Title 22 regulations are needed to provide the appropriate framework for the management of these new types of facilities, and utilization (as well as control) over the crucial tools such as secured perimeters and emergency intervention.

It is the intent of CDSS to promulgate all of these interrelated emergency regulations that ensure the needs and services of the client population served by EBSHs. For this as well as the aforementioned reasons the entire package is properly deemed emergency.

Enhanced Behavioral Supports Homes

The regulations in this package govern a new subcategory in Title 22 of the California Code of Regulations regarding "Enhanced Behavioral Supports Homes." These are primarily written to specify CDSS' role in regulating these new facilities which may either be licensed under CDSS as a Group Home or Adult Residential Facility and may otherwise meet all general licensing requirements for those two categories. In addition, it is recognized by the author of the legislation creating the EBSHs (2013 SB 856), as well as reflected in the proposed regulations currently promulgated by CDSS and DDS, that these new regulations are crucial in ensuring the two departments will work effectively in licensing and overseeing these new facilities.

SB 856 created the community care facility called "Enhanced Behavioral Supports Homes" which is a facility certified by DDS and licensed by CDSS as an adult residential facility or a group home, with a maximum of 4 clients, that provides 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral support, staffing, and supervision in a homelike setting.

Under the authority established in SB 856, DDS is simultaneously promulgating regulations for Title 17 of the California Code of Regulations to successfully govern the certification process and further oversight of EBSHs which will provide community based care for developmentally delayed individuals. Because of the CDSS crucial licensing and enforcement role established under SB 856, closely related regulations in Title 22 of the California Code of Regulations are also critical.

In order to ensure all the necessary provisions are established in Title 22 of the California Code of Regulations to successfully license the EBSHs subcategory, the following provisions must also be included in this package: Emergency Intervention provisions and Secured Perimeter provisions, as discussed below. This EBSHs regulation package shall be processed as emergency regulations as authorized by law in SB 856. The Secured Perimeter and Emergency Intervention provisions are essential components and must be included in this emergency regulation package, as they will be necessary in order to maintain immediate preservation of public peace, health and safety as well as the general welfare of the population that will be served by the EBSHs.

Secured Perimeter

The regulations in this package regarding Secured Perimeters are primarily written to address necessary changes to Adult Residential Facilities and Group Homes regulations, in light of the mandates of AB 1472 (Committee on Budget), Chapter 25, Statutes of 2012.

As required by AB 1472, DDS recently promulgated emergency regulations, at Title 17 California Code of Regulations (CCR), Division 2, Chapter 3, Subchapters 4 and 4.2, establishing DDS program standards for homes that would include secured perimeters and delayed egress devices.

The regulations in that DDS Regulation Package focused on those people who may receive DDS services and supports pursuant to the Lanterman Act but are difficult to service in the community with available resources and living options. Among the provisions enacted by AB 1472 was section 1267.75 and 1531.15 of the Health and Safety Code.

Because any such plan must be for a service already licensed and governed by CDSS, and further, that an application for such a plan requires approval from CDSS, the Department has a fundamental role in the application of these new statutes. For that reason, the Department is promulgating necessary regulations over the Department's critical role in licensing and oversight of Group Homes or Adult Residential Facilities seeking secured perimeters.

These new regulations regarding use of Secured Perimeters are likely to be closely related to the newly created facilities called Enhanced Behavioral Supports Homes (pursuant to recently amended Health and Safety Code sections 1502(a)(15) and 1567.61, et seq.). Therefore, the same group of clients is likely to be affected by both pieces of legislation. Because of the very similar intentions behind Health and Safety Code sections 1267.75 and 1531.15, the new regulations are closely related, intertwined and have equal urgency, justifying the emergency regulation procedure.

Emergency Intervention

The regulations in this package regarding Emergency Intervention are written to address Senate Bill 130 (2003) which added Chapter 750 (commencing with section 1180) to the Health and Safety Code. This Chapter lays out requirements for the use of restraints and/or seclusions (emergency interventions) in community care facilities, including prohibited techniques and an initial assessment of each person upon whom emergency interventions may be employed.

Regulations promulgated pursuant to SB 130 regarding use of emergency restraints justify the emergency regulation procedure, primarily because they are closely related to a new facility category called Enhanced Behavioral Supports Homes (Health and Safety Code Sections 1502(a)(15) and 1567.61, et seq.). Those individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision due to their behavior will often require the use of emergency intervention techniques. As a result, the regulations drafted both by CDSS and DDS directly address the use of emergency intervention in those facilities. Thus, these proposed regulations should be adopted pursuant to the same emergency regulation procedures explicitly authorized by EBSHs statute.

Conclusion

As discussed above, the new laws creating the EBSHs services as well as Secured Perimeters and Emergency Intervention have assigned CDSS crucial roles in overseeing, licensing and enforcing regulations for the individuals who may be clients in the facilities licensed or authorized to utilize any of those types of care. Because many of those clients are likely to be DDS consumers as well, the roles are intertwined between those two departments, and the regulations established by CDSS must be carefully orchestrated with those developed by DDS. These CDSS regulations as well as the pending DDS regulations for the EBSHs are all closely related regulations and best assessed and promulgated as a whole, rather than various pieces. The emergency status as applied to one section of this package should apply to all, to best protect the health and safety of the public as well as the residents of the facilities or recipients of the care controlled by these regulations.

SECURED PERIMETERS REGULATIONS

Section 80001(1)(1)

Specific Purpose:

This adoption is necessary to establish as well as augment the definition of "Lacks Hazard Awareness and Impulse Control," from Title 22, Chapter 1 on delayed egress and secured perimeters. This definition clarifies the use of the term in Health and Safety Code section 1531.1(d)(3).

Factual Basis:

This adoption is necessary to ensure a licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters and the licensing agency are aware of the meaning of "Lacks Hazard Awareness and Impulse Control" which meets the clarity standard of the Administrative Procedure Act (APA), Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80001(1)(2) through (1)(5)

Specific Purpose/Factual Basis:

These provisions have merely been re-lettered consecutively from the original 80001(1)(1) through (1)(4) to maintain lettering order.

Section 80001(s)(1) and Handbook

Specific Purpose:

The incorporation by reference of Health and Safety Code, subsection 1531.15(b) is necessary to adopt into regulations the definition of "Secured Perimeters" as it pertains to adult residential facilities and group homes. The Health and Safety Code section 1531.15(b) provides that "Secured Perimeters" means fences that meet the requirements prescribed by the entire Section 1531.15. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of Health and Safety Code, subsection 1531.15(b) is necessary to provide the context of and consistency with the use of the term "Secured Perimeters" that will ensure a licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters and the licensing agency are aware of the applicable statute and regulations. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code and the principles of "Plain English" rules drafting.

Section 80001(s)(2) through (s)(8)

Specific Purpose/Factual Basis:

The provisions of Sections 80001(s)(1) through (s)(7) have merely been re-lettered consecutively to 80001(s)(2) through (s)(8) to maintain lettering order.

Section 80020(a)(2) and Handbook

Specific Purpose:

This provision requires an applicant or licensee to meet the fire clearance requirements as further specified in Title 17, Section 56072(d) and (h) prior to the use of secured perimeters.

- Section 56072(d) specifies that the fire clearance for the use of secured perimeters must be obtained through the CDSS, Community Care Licensing Division (CCLD) and that approval for the use of secured perimeters shall be contingent on a fire clearance being obtained.
- Section 56072(h) mandates that the CDSS' approval for the use of secured perimeters shall be immediately terminated when the approved fire clearance pertaining to secured perimeters is withdrawn or when the DDS withdraw its secured perimeter approval. The handbook section is included for ease of reference.

Factual Basis:

This adoption is necessary to ensure a licensee is aware that in Chapter 1, Section 80001, there are additional fire clearance approval requirements in the CCR, Title 17, Section 56072 that shall apply to the licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80020(c) and Handbook

Specific Purpose:

The incorporation by reference of Health and Safety Code section 1531.15(h) establishes the requirement in regulations that emergency fire and earthquake drills are to be completed during each shift in accordance with existing licensing requirements. This provision shall apply to a licensee or applicant of a Group Home or Adult Residential Facility that will use secured perimeters. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to ensure a licensee or applicant is aware that all staff must participate in emergency, fire and earthquake drills in order to prevent a disorderly response to an emergency fire and earthquake situation. This is necessary to protect the health and safety of all clients and staff during these situations. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code and the principles of "Plain English" rule drafting.

Section 80022(f)

Specific Purpose/Factual Basis:

This non-substantive change is being made to provide clarity to the licensee. The word "has" is being changed to "have."

Section 80022(g) and Handbook

Specific Purpose:

This incorporation by reference notifies an applicant or licensee of their duty to provide the information in the Plan of Operation required in Health and Safety Code section 1531.15(f) and in the CCR, Title 17, Section 56070(a) and (b) for the purpose of the use of secured perimeters.

- Section 1531.15(f) requires that a licensee seeking approval for the use of secured perimeters must first revise its facility plan of operation and then obtain a certificate of approval from the DDS. This plan of operation revision cannot be approved by the CDSS until the licensee provides the certification of approval that had been first obtained by the DDS. The plan of operation revision must include the following:
 - Section 1531.15(f)(1) – a description of secured perimeters that are consistent with the state Fire Marshall standards.
 - Section 1531.15(f)(2) – a description of staff training.
 - Section 1531.15(f)(3) – a description of how the facility will ensure the protection of the client's personal rights.
 - Section 1531.15(f)(4) – a general description of how a client's lack of hazard awareness and impulse control behavior will be managed.
 - Section 1531.15(f)(5) – a description of the emergency evacuation procedures.
 - Section 1531.15(f)(6) – a description of how the facility will comply with applicable health and safety standards.

- Section 56070(a) and (a)(1) requires that the facility plan of operation that is required by the CCR, Title 22, Section 80022 include additional information when a licensee or applicant is seeking to use secured perimeters. Subsection (a)(1) requires that plan of operation include documentation from the local regional center that demonstrates the local need for the facility to use secured perimeters.
- Section 56070(a)(2) requires the following descriptions in the plan of operation:
 - Section 56070(a)(2)(A) requires the licensee to indicate how interior and exterior space is to be used to permit consumers to move freely and safely.
 - Section 56070(a)(2)(B) requires the licensee to describe staff qualifications and staff training curricula, including participation by the local regional center and the clients' rights advocate.
 - Section 56070(a)(2)(C) requires the licensee or applicant to explain how the licensee will protect a client's personal rights.
 - Section 56070(a)(2)(D) requires the licensee or applicant to describe how they will manage a consumer's lack of hazard awareness and impulse control behavior.
 - Section 56070(a)(2)(E) requires the licensee to inform consumers they have a right to leave the facility and requires the licensee to describe how supervision of the consumer will be maintained while the consumer is out of the facility and continued supervision for consumers that remain in the facility.
 - Section 56070(a)(2)(F) requires the inclusion of procedures to be used for conducting and documenting fire and earthquake drills at least every three months that includes all facility staff.
 - Section 56070(a)(2)(G) requires the inclusion of the facility's emergency evacuation procedures.
 - Section 56070(a)(2)(H) requires that a licensee intending to add a secured perimeter to a home currently utilizing delayed egress devices must include a plan to relocate consumers currently living in the facility who do not meet the criteria for continued residence in a facility with secured perimeters.
- Section 56070(b) requires the licensee or applicant to provide 16 hours of direct care staff training, prior to the staff being left alone with clients, and this training shall include at a minimum the following:
 - Section 56070(b)(1) personal rights of consumers while secured perimeters and delayed egress are being used.

- Section 56070(b)(2) behavior management techniques of consumers who lack hazard awareness and impulse control.
- Section 56070(b)(3) procedures to follow in case of a medical emergency or facility disaster.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of the specific components required in the Plan of Operation is necessary to provide consistency with statute and regulations that are already established in the California Community Care Facilities Act and Title 17, respectively. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80022(h) and Handbook

Specific Purpose:

This incorporation by reference clarifies that an applicant or licensee must meet the requirements as specified in the CCR, Title 17, Section 56072(c) prior to the use of secured perimeters. Section 56072(c) requires the licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters to submit the DDS approved secured perimeter component of the plan of operation to the CDSS and requires the CDSS' approval or denial. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of the CCR, Title 17, Section 56072(c) is necessary to ensure that a licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters that there is an additional licensing requirement specific to the Plan of Operation that is necessary to receive approval for the use of secured perimeters. This provision is also necessary to prevent the CDSS from approving the use of secured perimeters without first obtaining the approval from the DDS. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80022(i) and Handbook

Specific Purpose:

This incorporation by reference of the CCR, Title 17, Section 56072(e) and (f) establishes that an applicant or licensee of a Group Home or Adult Residential Facility that are seeking

approval for the use of secured perimeters must have the processes in Section (e) and (f) completed prior to the use of secured perimeters:

- Section 56072(e) requires the CDSS to review the licensee or applicant licensing history and may require additional documentation to verify his or her ability to protect the health and safety of the clients they will serve when utilizing secured perimeters.
- Section 56072(f) requires the CDSS to provide to the applicant or licensee a written determination of the approval or denial of the secured perimeter component of the plan of operation.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of the CCR, Title 17, Section 56072(e) and (f) is necessary to ensure that a licensee or applicant of a Group Home or Adult Residential Facility seeking approval for the use of secured perimeters follows the additional Plan of Operation provisions necessary to obtain approval for the use of secured perimeters. These provisions prevent the CDSS from providing approval to a licensee or applicant that has a history of licensing violations which demonstrate a lack of ability to protect the clients appropriately in addition to the requirement that the CDSS must provide the written determination to the applicant or licensee for transparency. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80022(j) and (k)

Specific Purpose/Factual Basis:

These provisions have merely been re-lettered consecutively from the original 80022(g) and (h) to maintain lettering order.

Section 80028(g) and Handbook

Specific Purpose:

This incorporation by reference clarifies that an applicant or licensee seeking approval to use secured perimeters shall comply with the capacity requirements as specified in Health and Safety Code section 1531.15(a).

- Section 1535.15(a) provides that a licensee of an adult residential facility or group home for no more than six residents, except for the larger facilities provided for in paragraph (1) of subdivision (k), that is utilizing delayed egress devices pursuant to Section 1531.1 may install and utilize secured perimeters in accordance with the provisions of this Section.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to provide consistency with regulations for secured perimeters that are already established in Title 17 and is necessary for clarity by concisely identifying the types of licensed residential facilities that may utilize secured perimeters.

Section 80065(f)(8) and Handbook

Specific Purpose:

This incorporation by reference requires that a licensee of a Group Home or Adult Residential Facility that has been approved by the CDSS to use secured perimeters shall comply with the staff training requirements as established by the Health and Safety Code section 1531.15(e) and Title 17, Section 56070(b), if they are to utilize secured perimeters.

- Section 1535.15(e) states that the licensee shall provide staff training regarding the use and operation of the secured perimeters, protection of residents' personal rights, lack of hazard awareness and impulse control behavior, and emergency evacuation procedures.
- Section 56070(b) requires the licensee or applicant to provide 16 hours of direct care staff training, prior to the staff being left alone with clients, and this training shall include at a minimum the following:
 - Section 56070(b)(1) personal rights of consumers while secured perimeters and delayed egress are being used.
 - Section 56070(b)(2) behavior management techniques of consumers who lack hazard awareness and impulse control.
 - Section 56070(b)(3) procedures to follow in case of a medical emergency or facility disaster.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to provide consistency with regulations for secured perimeters that are already established in Title 17 and what is required in the Health and Safety Code. It is also necessary to ensure staff is trained to provide care and supervision to clients living in a facility utilizing secured perimeters. Based on experience with other training requirements for residential providers, the Department understands that 16 hours is sufficient training time to cover the required subjects.

Section 80065(n) and Handbook

Specific Purpose:

This provision requires that a licensee shall comply with the requirements as specified in Health and Safety Code section 1531.15(g), and Title 17, Section 56071(a), if they are to utilize secured perimeters.

- Section 1531.15(g) states that secured perimeters shall not substitute for adequate staff.
- Section 56071(a) states that the use of secured perimeters shall not be a substitute for adequate staff in sufficient numbers, including additional staffing as determined by the client's regional center planning team.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to provide clarity and consistency with statute and regulations for the staffing of an Adult Residential Facility or Group Home that has been approved for the use of secured perimeters. Current regulations require minimum staffing standards and this adoption is necessary to clarify that adequate staffing must be maintained despite the utilization of secured perimeters.

Section 80065(o)

Specific Purpose:

This provision requires a licensee to meet the Emergency Intervention training requirements as specified in the CCR, Title 22, Section 84365 for Group Homes and Section 85300 for Adult Residential Facilities if they are to utilize secured perimeters.

Factual Basis:

This incorporation by reference is necessary to provide clarity that a licensee of an Adult Residential Facility or Group Home that has been approved to use secured perimeters provides training on Emergency Intervention consistency with Emergency Intervention regulations for secured perimeters that are already established in Title 17.

Section 80068(d)

Specific Purpose:

This provision requires a licensee to ensure that the client's admission agreement contains written consent agreeing to the placement when the client has not been court ordered to be placed in a facility with secured perimeters.

Factual Basis:

This adoption is necessary to ensure that a licensee has obtained written consent agreeing to the placement when the client has not been court ordered to be placed in a facility with secured perimeters.

Sections 80068(d)(1) through (d)(1)(C)

Specific Purpose:

This provision is required to explain the consent and revocation requirements when a client is being informed of the secured perimeters and written consent is being obtained from the client: including who is able to sign such a consent agreement, and the specific contents required in such written consent agreement (including a description of the location and manner of perimeter security, statement of delayed egress of the facility, and statement that consent may be revoked at any time, pursuant to Section 80072(c) due to the personal rights of a client as established in Title 22). The terms established here closely mirror the obligations already established in Title 17, Section 56073 regulations which simultaneously govern these admission agreements.

Factual Basis:

This adoption is necessary so the client or, as appropriate, the client's conservator or other person with legal authority, is aware of the nature of the secured perimeters as well as the individual's rights to revoke consent. These regulations further comply with the Title 22, Sections 80072, 85072, and 84072, recognition of personal rights of client, and further comply with the California and United States Constitutions. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80068(e) through (i)

Specific Purpose/Factual Basis:

These provisions have merely been re-lettered to maintain ordering of regulations from 80068(d) through 80068(h).

Section 80070(h) and Handbook

Specific Purpose:

This incorporation by reference of the CCR, Title 17, Section 56073(b), (c), (e), (m) and Section 56071(b) through (b)(2) requires the licensee or applicant of an Adult Residential Facility or Group Home that has been approved to use secured perimeters to include one of the following documents in the client's records:

- Section 56073(b) requires that the regional center obtain either a court order authorizing the placement or written consent agreeing to the placement as well as who is required to sign it and what it is required to include.
- Section 56073(c) specifies what needs to be maintained in the consumer's file at the facility, including the court order or written consent required under subdivision (b) and documentation of the date and time of any withdrawal of consent.
- Section 56073(e) requires that a copy of those portions of the current IPP related to the residential placement and community services and supports, including the transition plan, shall be maintained in the consumer's record at the facility.
- Section 56073(m) provides the steps and in what order to follow them if the individual who signed the consent form for placement pursuant to subdivision (b) informs the licensee or the regional center that he or she withdraws his or her consent to the placement.
- Section 56071(b)(1) requires the written consent to placement, or
- Section 56071(b)(2) requires the court order authorizing placement of the client in a non-state-operated facility utilizing secured perimeters.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of the specific components required in the Client Records is necessary to provide consistency with statute and regulations that are already established in the California Community Care Facilities Act and Title 17, respectively. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 80070(h)(1)

Specific Purpose:

This provision requires the licensee to obtain and maintain documentation showing that the client's legally authorized representative is legally entitled to act on behalf of the client, when signing an informed consent agreement to placement in the facility.

Factual Basis:

This provision is necessary to ensure the licensee is aware that documentation showing that the authorized representative is legally entitled to act on the behalf of the client is required. This provision is necessary to protect the personal rights of the client and for clarity and consistency.

Section 80070(i) and Handbook

Specific Purpose:

This provision requires a licensee that utilizes secured perimeters to include the document required by the CCR, Title 17, Section 56073(a), as part of the Client Records. Section 56073(a) explains that prior to admission to an adult residential facility or group home utilizing secured perimeters, the regional center shall conduct a comprehensive assessment and convene a planning team meeting to determine whether the consumer lacks hazard awareness or impulse control and requires the level of supervision afforded by a facility equipped with secured perimeters and delayed egress devices. The planning team's determination shall be documented in the client record. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to maintain all proper documentation in the client records as currently required in Title 17, Section 56073(a). Such documentation is needed for the Department's effective enforcement of this portion of the admission process.

Section 80072(b) and Handbook

Specific Purpose:

This incorporation by reference of the Health and Safety Code section 1531.15(j) shall apply to a licensee that has received approval from the Department for the use of secured perimeters. This provision provides that a licensee shall not be required to obtain a waiver or exception to a regulation that would otherwise prohibit the locking of a perimeter fence or gate. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary so the licensee does not have to go through a lengthy waiver process especially given that the secured perimeter provisions are authorized by statute in the Community Care Facilities Act.

Section 80072(c)

Specific Purpose:

This provision provides that in the event the licensee is already using secured perimeters and a written consent has been obtained for a client then the client, or as appropriate, the client's conservator or other person with legal authority, has the right to withdraw the written consent at any time.

Factual Basis:

This provision is necessary to ensure the protection of the client's right to revoke their written consent to be subjected to secured perimeters.

Section 80072(c)(1)

Specific Purpose:

This provision requires that the client not be subject to secured perimeters once the written consent for placement in the facility with secured perimeters has been revoked.

Factual Basis:

This provision is necessary to provide clarity and consistency with the purpose of having the client provide written consent and his or her personal right to not be subject to the secured perimeters once the written consent has been revoked. In the event that a client revokes their consent, either verbally or in writing, then the licensee must ensure the client is reasonably supported in not being subject to secured perimeters.

Section 80072(d) through (f)

Specific Purpose/Factual Basis:

These provisions have merely been re-lettered consecutively from 80072(b) through 80072(d) to maintain ordering of regulations.

Section 80087(j) and Handbook

Specific Purpose:

This provision requires a licensee to meet the requirements as specified in Health and Safety Code section 1531.15(j), and Title 17, Section 56071(c), for Group Homes and Adult Residential Facilities, if they are to utilize secured perimeters.

- Section 1531.15(i) provides that interior and exterior space shall be available on the facility premises to permit clients to move freely and safely.
- Section 56071(c) states specific requirements for secured perimeters, including the size of the dispersal areas, and prohibits gates not in compliance with Section 1021 of the California Building Standards Code.

The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference is necessary to provide consistency with the regulations for secured perimeters that are already established in the Health and Safety Code as well as Title 17, Section 56071(c) and to inform licensees of the requirements and specifications for the secured perimeters and gates that may be used. The proposed requirements are the same as those specified in existing statute for other residential community care facilities with delayed egress devices that are similarly authorized to use secured perimeters [Health and Safety Code section 1569.699(b)]. The CDSS has determined that these requirements are also appropriate for the licensed community care facilities subject to the proposed regulations.

EMERGENCY INTERVENTION REGULATIONS

Sections 85000(a) and (a)(1)

Specific Purpose:

Subsection (a) clarifies that in addition to Chapters 1 and 6, Subchapter 1 of Chapter 6, Emergency Intervention shall also apply to licensees of Adult Residential Facilities, when a licensee utilizes or reasonably foresees that he or she will utilize a manual restraint or seclusion. Subsection (a)(1) clarifies that Section 85302 shall apply to licensees of Adult Residential Facilities.

Factual Basis:

These amendments are necessary to ensure the licensee is aware that there are additional requirements regarding Adult Residential Facilities. These provisions meet the clarity standard of the APA, section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85068.2(b)(1)

Specific Purpose:

This amendment is made to require the licensee to obtain the client's desires and background from the client as well as the client's family or any authorized representative regarding numerous factors in the development of a Needs and Services Plan.

Factual Basis:

This amendment is necessary to ensure that the client is involved in the development of the Needs and Services Plan, which will consider all of the individual factors listed in Section 85068.2(b)(1)(G). Requiring such a detailed Needs and Services Plan helps prepare the licensee to take necessary preventative actions before relying on use of emergency intervention.

Section 85068.2(b)(1)(G)

Specific Purpose:

This subsection is being adopted to reflect Health and Safety Code section 1180.4(a), requiring that the licensee document the results of an initial assessment of a client, prior to or on the date of admission.

Factual Basis:

This subsection is necessary to ensure that the licensee has the necessary information documented at the time of admission, including the terms of the detailed Needs and Services Plan which will help prepare the licensee to take necessary preventative actions before relying on use of physical emergency interventions. The requirement that this be documented will assist in the enforcement of the entire Section 85068.2 subsection (b)(1) to ensure these provisions are adequately documented.

Sections 85068.2(b)(1)(G)1. and (G)2.

Specific Purpose:

These sections are being adopted to require documentation of the results of the initial assessment prior to or on the day of admission. These detailed items focus on factors which should be considered to support the writing of the Needs and Services Plan before emergency interventions are imposed:

- Section 85068.2(b)(1)(G)1. requires the initial assessment be based on information available at that time, that it be maintained and kept current.
- Section 85068.2(b)(1)(G)2. requires input from the client, authorized representative if any, and if the client chooses, from someone he or she desires to be present, such as a family member, significant other, or a person designated by the client, if the desired person can be present at the time of admission.

Factual Basis:

The adoption of this subsection is necessary to assist the licensee in clarifying which information must be addressed in the Needs and Services Plan. SB 130 (Chesbro, 2003) codified these standards for the initial assessment to ensure this information is relevant to the individual's behavior issues and potential needs for emergency intervention.

- Section 85068.2(b)(1)(G)1. is necessary to set a clear timeline and documentation requirements in order to maintain a timely record of this important fact gathering to meet the client's needs.

- Section 85068.2(b)(1)(G)2. is necessary to provide additional support and information to ensure the licensee has all pertinent information to develop a meaningful Needs and Services Plan for the client.

Sections 85068.2(b)(1)(G)3. through 3.a.ii.

Specific Purpose:

- Sections 85068.2(b)(1)(G)3. and 3.a. require the initial assessment to include the client's advance directive or wishes regarding the techniques the licensee will use related to de-escalation or the use of seclusion or manual restraint.
- Section 85068.2(b)(1)(G)3.a.i. requires the licensee to honor the advance directive unless it violates statute or regulation or it jeopardizes the health or safety of the client or another person.
- Section 85068.2(b)(1)(G)3.a.ii. defines a de-escalation technique as one designed to defuse a potentially dangerous interaction between two or more individuals.

Factual Basis:

- Sections 85068.2(b)(1)(G)3. and 3.a. are necessary to ensure the licensee avoids emergency interventions which may trigger the client into escalating dangerous behavior.
- Section 85068.2(b)(1)(G)3.a.i. is necessary to clarify that if the wishes of the client involved illegal or dangerous activity, the licensee is not required to follow through with those wishes. This helps ensure the licensee is relieved from a requirement that would compromise a person's safety or encourage illegal activity.
- Section 85068.2(b)(1)(G)3.a.ii. is necessary to meet the clarity standard for the licensee and the public.

Section 85068.2(b)(1)(G)3.b.

Specific Purpose:

This section requires the licensee, during the initial assessment of the client, to identify the early warning signs, triggers, and precipitants that cause the client to escalate and the earliest precipitant of aggression for a client with a known or suspected history of aggressive behavior or is currently aggressive.

Factual Basis:

This section is necessary to enable the licensee to develop an effective Needs and Services Plan and staff training so that emergency interventions are optimal in preventing aggression, restraint and seclusion and keeping the clients and staff safe.

Section 85068.2(b)(1)(G)3.c.

Specific Purpose:

This section requires the licensee, during the initial assessment, to determine the techniques, methods or tools that would help the client control his or her behavior.

Factual Basis:

This section is necessary so that the licensee, through training and supervision, will ensure staff is using helpful and effective behavior methods to ensure the clients and staff is safe and the client learns behavioral control.

Section 85068.2(b)(1)(G)3.d.

Specific Purpose:

This section requires the licensee, during the initial assessment of the client, to identify preexisting medical conditions or physical disabilities or limitations that would place the client at greater risk during a restraint or seclusion.

Factual Basis:

This section is necessary to ensure the licensee, by including this in the Needs and Services Plan, provides the necessary information, supervision and training to staff to ensure there is no risk of harm to the client or others.

Section 85068.2(b)(1)(G)3.e. and Handbook

Specific Purpose:

This section requires the licensee, during the initial assessment of the client, to identify any client trauma history, including any history of sexual or physical abuse that the affected client feels is relevant.

The Handbook section is added for ease of use, providing the pertinent parts of Health and Safety Code section 1180.4(a) through (a)(5).

Factual Basis:

This section is necessary to ensure the licensee, by including this in the Needs and Services Plan, provides the necessary information, supervision and training to staff in order to not contribute to escalating the client's dangerous behavior.

Section 85068.2(b)(1)(H)

Specific Purpose:

This subsection is being adopted as a cross reference to Section 85368.2(a), requiring the licensee to include the Individual Emergency Intervention Plan in the client's Needs and Services Plan.

Factual Basis:

This section is necessary for the health and safety of clients, because establishing that the Individual Emergency Intervention Plan is part of the client's Needs and Services Plan also makes the Individual Emergency Intervention Plan subject to the safeguards already developed in the Needs and Services Plan sections (80068.2, 80068.3, 84068.2 and 84068.3). The Needs and Services Plan is the cornerstone of how the licensee will mobilize the staff to provide the needed services for the client. It is important to ensure the client has an individual plan that is updated because a client's needs change. Updating the plan will ensure the licensee is providing the safest emergency intervention for that client. It is important for the client and authorized representative to have a copy of the plan prior to the use of emergency interventions, because this will ensure the licensee is adhering to the plan developed based on the initial assessment. This will ensure collaboration and empower the client to engage in ways to help de-escalate emergency situations.

SUBCHAPTER 1, Article 1, and Titles

Specific Purpose/Factual Basis:

This subchapter is being adopted to inform licensees of Adult Residential Facilities that utilize or reasonably foresees that he or she will utilize a manual restraint or seclusion that their facilities are subject to these emergency intervention regulations and that this is in addition to other applicable regulations.

A new subchapter and article are being adopted to meet the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1. This subchapter and Article are necessary to implement specified provisions of Health and Safety Code sections 1180.1, 1180.3, 1180.4 and 1180.5, which provide authority, requirements and prohibitions regarding restraint and seclusion of clients in community care facilities.

Section 85300 and Title

Specific Purpose/Factual Basis:

A new section number and title are being adopted to meet the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85300(a)

Specific Purpose:

This subsection is being adopted to establish when the provisions governing emergency intervention will apply to the licensee of an Adult Residential Facility.

Factual Basis:

This subsection is necessary to clarify that licensees are aware that compliance with emergency intervention regulations is required. These provisions meet the clarity standard of the APA, section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85300(b) and Handbook

Specific Purpose:

This subsection is being adopted to inform the licensee that a continuum of interventions shall be used during an emergency intervention and that more restrictive forms of emergency interventions shall only be used after less restrictive forms of intervention on the continuum have been deemed ineffective in preventing injury. These provisions meet the clarity standard of the APA, section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Factual Basis:

This subsection is necessary to ensure licensees are utilizing the least restrictive interventions necessary. When a client presents a serious danger or threat to self or others, it is a stressful situation that may trigger a "fight or flight" response from staff. To ensure staff is providing a response that emulates the same level of the danger or threat presented by the client, the Department has found in its experience that it is important to guide the care staff to choose a safe response and start with the least restrictive interventions. The more restrictive an intervention is (e.g. restraint), the more dangerous it may become. This regulation is consistent with Health and Safety Code section 1180.4(j). This also meets the clarity standard of the APA, section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting. Handbook is provided for ease of use.

Section 85300(c) through (c)(5)

Specific Purpose:

This subsection is being adopted to require that a facility may only use an emergency intervention such as manual or seclusion under specifically listed types of conditions. Those conditions are limited to:

- Section 85300(c)(1) specifies the force used shall not exceed that which is necessary to avert the injury or danger being threatened,
- Section 85300(c)(2) specifies the risk of injury caused by the force applied shall not exceed the risk of injury being averted,
- Section 85300(c)(3) specifies the manual restraint or seclusion is permitted only when a client's behavior presents an imminent danger of serious injury to self or others,
- Section 85300(c)(4) specifies the duration of a manual restraint or seclusion ceases as soon as the risk of imminent danger of serious injury to self or others from the client's behavior has ceased, and
- Section 85300(c)(5) specifies the manual restraint or seclusion may not be used if it is otherwise prohibited by statute or regulation.

Factual Basis:

This subsection is necessary to ensure a licensee understands via regulations the very specific limitations on when or how a manual restraint or seclusion may be used on a client. This is consistent with intention cited in Health and Safety Code section 1180(a) to reduce the use of seclusion and behavioral restraints in facilities. These provisions meet the clarity standard of the APA, section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85301 and Title

Specific Purpose/Factual Basis:

This establishes that, in addition to the terms in sections 80001 and 85001, this section, entitled Definitions, is being adopted to define emergency intervention related terms. A new section number and title are being adopted to meet the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85301(b)(1)

Specific Purpose/Factual Basis:

This section is being adopted to define the term "Behavior Management Consultant" as it pertains to the Adult Residential Facility Emergency Intervention Plan. This definition is necessary to ensure the Behavior Management Consultant has an appropriate level of expertise to fulfill their function and clarify that licensees understand a "Behavior Management Consultant" must meet the qualifications specified in this section. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(b)(1)(A) through (G)

Specific Purpose/Factual Basis:

These sections are being adopted to define who may act as a behavior management consultant in developing Adult Residential Facility Emergency Intervention Plans. These sections are necessary to specify what constitutes a Behavior Management Consultant for the purposes of assisting a licensee in developing an Emergency Intervention Plan in an Adult Residential Facility. These professional individuals have advanced training in safety and behavior.

Section 85301(c)(1)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Chemical Restraint" means involuntary emergency medication used to control behavior, including drugs used for control of inappropriate behavior and used in a manner not required to treat the individual's medical symptoms. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(c)(2)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Clinical and Quality Review" means a review that is strictly objective and based on training and the facility's Plan of Operation. This section is necessary to ensure the licensee does not read the word to mean related to a "medical" clinic, as community care facilities are non-medical per Health and Safety Code section 1502(a). This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(c)(3)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Containment" means a brief physical restraint or a brief manual restraint of a person for the purpose of effectively gaining control of a person who is aggressive or is a danger to self or others. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(e)(1)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Emergency Intervention(s)" mean the safety measures to prevent imminent risk of serious physical harm to an individual and the methods

used to offer immediate, short-term help to clients who experience an event that produces emotional, mental, physical, and behavioral distress or problems that have the potential to result in injury to self or others. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(e)(2)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that an Emergency Intervention Plan is to address the prevention of harm and to include actions that will be implemented by the licensee to comply with the requirements specified in Section 85322(a). This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(e)(3)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Emergency Intervention Training" means an instructional curriculum provided to the facility personnel regarding the techniques that may be used to prevent injury and maintain safety for clients, who are a danger to self and others, while emphasizing positive behavioral supports and techniques that are alternatives to physical restraint and seclusion. This section is necessary to meet the clarity standard as this term is used throughout the regulation package.

Section 85301(i)(1)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that "Imminent Danger" means there is behavior that is reasonably certain to cause a substantial risk of death or serious physical injury. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(i)(2)

Specific Purpose/Factual Basis:

This definition is necessary to clarify that an "Individual Emergency Intervention Plan" means a written plan of the emergency intervention techniques that will be used by the licensee with a specific client. The plan shall be developed in consultation with a Qualified Behavior Modification Professional and if available, someone the client desires to provide input. The techniques, specified in the plan, are in addition to the emergency intervention techniques set forth in the facility Emergency Intervention Plan, or they may differ based on the client's individual needs in emerging crisis situations. This section is necessary to meet the clarity standard as this term is used throughout this regulation package.

Section 85301(m)(1) and Handbook

Specific Purpose/Factual Basis:

This section is being adopted to clarify that "Manual Restraint" means the same as "Physical Restraint" as provided in Health and Safety Code section 1180.1, subsection (d). This section is necessary to meet the clarity standard as this term is used throughout this regulation package. This also eliminates confusion when licensees encounter these two different terms. Handbook is added to provide the pertinent sections of Health and Safety Code section 1180.1 for ease of use.

Section 85301(m)(2) and Handbook

Specific Purpose/Factual Basis:

This section is being adopted to incorporate the statutory definition of "Mechanical Restraint" which means the use of a mechanical device, material, or equipment attached or adjacent to the person's body that he or she cannot easily remove and that restricts the freedom of movement of all or part of a person's body or restricts normal access to the person's body, and that it is used as a behavioral restraint as provided in Health and Safety Code section 1180.1, subsection (c). This section is necessary to meet the clarity standard, as this term is used throughout this regulation package. Handbook provides Health and Safety Code section 1180.1(c) for ease of use.

Section 85301(q)(1) through (q)(1)(F)

Specific Purpose/Factual Basis:

These sections are being adopted to define who may act as a Qualified Behavior Modification Professional. These sections are necessary to specify what constitutes a Qualified Behavior Modification Professional for the purposes of behavior assessments and implementing intervention methods. These professional individuals have advanced training in implementing behavior modification services.

Section 85301(s)(1) and Handbook

Specific Purpose/Factual Basis:

This section is being adopted to incorporate the statutory definition of "Seclusion" in Health and Safety Code section 1180.1, subsection (e). This section is necessary to meet the clarity standard as this term is used throughout this regulation package. The handbook section is included for ease of reference.

Section 85301(s)(2) and Handbook

Specific Purpose/Factual Basis:

This section is being adopted to define the term "Seclusion Room" and to clarify that no person with a developmental disability may be placed in a seclusion room. This section is necessary to meet the clarity standard as this term is used throughout this regulation package. The handbook section is included for ease of reference.

Section 85301(s)(3) and Handbook

Specific Purpose/Factual Basis:

This section is being adopted to define the term "Serious Injury" as defined in Health and Safety Code section 1180.1(g). This section is necessary to meet the clarity standard as this term is used throughout this regulation package. The handbook section is included for ease of reference.

Section 85301(t)

Specific Purpose/Factual Basis:

This section is being adopted to define the term "Time-Out" and to clarify that a "time-out" is different from seclusion and means a behavioral management technique involving the client, voluntarily and without force, being separated from the current environment to calm and allow the client to regain self-control. This section is necessary to meet the clarity standard as this term is used in the definition of seclusion.

Section 85302 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for Emergency Intervention Prohibitions in order to introduce regulations pertaining to emergency intervention techniques which are prohibited for use in an Adult Residential Facility. The title is necessary to meet the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)

Specific Purpose:

This section is being adopted to specify what emergency intervention techniques are prohibited to be used on a client in an Adult Residential Facility.

Factual Basis:

This section is necessary to ensure the licensees, and the licensee's designee, are aware of what emergency intervention techniques are prohibited from being used on a client. These prohibitions are being put into place in the interest of the safety and well-being of the clients. This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(1)

Specific Purpose:

This section is being adopted to prohibit the use of mechanical restraint in Adult Residential Facilities.

Factual Basis:

This section is necessary to ensure licensees are aware that the use of a mechanical restraint is prohibited in Adult Residential Facilities, in the interest of the health and safety of clients. Mechanical restraint is defined in Section 1180.1(c) of the Health and Safety Code. Mechanical restraint is more restrictive than manual restraint, as it would allow a staff to walk away for extended periods of time leaving the client unable to move at will and may result in staff no longer monitoring the client in crisis. This section is consistent with Section 1180.4(j) of the Health and Safety Code.

Section 85302(a)(2)

Specific Purpose:

This section is being adopted to prohibit the use of manual restraint as an extended procedure which is to say that the manual restraint would not continue after a client has successfully de-escalated and no longer presents a danger to self or others.

Factual Basis:

This section is necessary to ensure licensees are aware that the use of manual restraint as an extended procedure is prohibited. This is necessary to protect the health and safety of the clients. This section is also consistent with Section 1180.4(h) of the Health and Safety Code.

Section 85302(a)(3)

Specific Purpose:

This section is being adopted to prohibit the use of manual restraint or seclusion when there is no imminent risk of serious physical harm to self or others.

Factual Basis:

This section is necessary to ensure manual restraint or seclusion is only used when necessary. It is necessary to protect the health and safety of the clients. This section is also consistent with Section 1180.4(b). This meets the clarity standard of the APA, Government Code section 11349, subsection (c).

Section 85302(a)(4)

Specific Purpose:

This section is being adopted to prohibit the use of adverse behavior modification interventions, including but not limited to, body shaking, water spray, slapping, pinching, ammonia vapors, sensory deprivation and electric shock.

Factual Basis:

This section is necessary to ensure licensees are aware that the use of adverse behavior modification intervention(s) is prohibited in Adult Residential Facilities. Adverse behavior modification interventions are prohibited, because these actions incite rather than calm persons in crisis. They also could induce pain and violate the client's personal rights at Section 80072(a)(3).

Section 85302(a)(5)

Specific Purpose:

This section is being adopted to prohibit intentionally inducing pain in order to control behavior or limit a client's movement.

Factual Basis:

This section is necessary to protect the health and safety of clients. This section is also consistent with Personal Rights, Section 80072, subsection (a)(3). This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(6)

Specific Purpose/Factual Basis:

This section is being adopted to prohibit the use of any technique which restricts a client's breathing or circulation. This is necessary to protect the health and safety of clients. This section is also consistent with Health and Safety Code section 1180.4(c)(1) and Personal Rights Section 80072, subsection (a)(3). This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(7)

Specific Purpose:

This section is being adopted to prohibit manual restraint with the person's hands held or restrained behind the person's back.

Factual Basis:

This section is necessary to ensure the client being restrained is restrained in the least restrictive alternative and provided the maximum freedom of movement, while ensuring the physical safety of the person and others. This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(8)

Specific Purpose:

This section is being adopted to prohibit any manual restraint technique in which a staff member places pressure on a person's back or places his or her body weight against the person's torso or back.

Factual Basis:

This section is necessary to ensure the manual restraint does not obstruct a person's respiratory airway or impair the person's breathing or respiratory capacity. This section is consistent with Health and Safety Code section 1180.4, subsections (c)(1). This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(9)

Specific Purpose:

This section is being adopted to prohibit the use of any type of item covering over a client's head or face.

Factual Basis:

This section is necessary to prevent injury or death of the client as the result of covering the client's head or face with blankets, rugs, pillows, etc. during a crisis situation. Covering a client's head or face with any item may increase the risk for accidental strangulation or suffocation. This section clarifies Health and Safety Code section 1180.4, subsections (c)(1) through (c)(2), which prohibit the use of these techniques during a manual restraint or seclusion in an Adult Residential Facility.

Section 85302(a)(9)(A)

Specific Purpose:

This section is being adopted to inform licensees that padding under a client's head to prevent injury is acceptable, provided it does not impair the client's breathing.

Factual Basis:

This section is necessary to clarify that the placing of padding under a client's head as a safeguard to possible injury is an exception to Section 85302, subsection (a)(9) and is not prohibited provided it does not impair breathing, as this protects the safety of the client. This could also provide comfort to the client, which in turn helps to deescalate the client during a crisis. This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(10) and Handbook

Specific Purpose:

This section is being adopted to prohibit the use of chemical restraint or psychotherapeutic or behavior modifying drugs in Adult Residential Facilities when used to control behavior or to restrict the client's freedom of movement, when that drug is not a standard treatment for the person's medical or psychiatric condition. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to protect the rights of clients and to prevent the inappropriate use of chemical restraint or psychoactive medications and to clarify Health and Safety Code section 1180.4, subsection (k).

Section 85302(a)(11)

Specific Purpose:

This section is being adopted to prohibit emergency intervention techniques that may be expected to cause serious injury and may require medical treatment from a health practitioner.

Factual Basis:

This section is necessary for the health and safety of clients and to be consistent with Personal Rights, Section 80072, subsection (a)(2). This meets the clarity standard of the

APA, Government Code section 11349, subsection (c) and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(12)

Specific Purpose:

This section is being adopted to prohibit the use of verbal abuse or threats by staff, including, but not limited to, non-verbal communication that threatens a restraint or seclusion will be used to control the client.

Factual Basis:

This section is necessary for the health and safety of clients and to be consistent with Personal Rights, Section 80072(a)(3) which prohibits the use of verbal abuse or threats of clients by staff. Verbal abuse or threats are not an emergency intervention technique. Manual restraint and/or seclusion are not part of a treatment plan or to be used to shape behavior, they are only to be used as a last resort to protect the client from harm in crisis.

Section 85302(a)(13)

Specific Purpose:

This section is being adopted to prohibit the isolation of a client in an area from which the client cannot voluntarily exit, in Adult Residential Facilities, except as allowed in Section 85375 Seclusion Room.

Factual Basis:

This section is necessary to ensure licensees are aware that the isolation of a client in any area is prohibited in Adult Residential Facilities as an emergency intervention technique unless it is a Seclusion Room, as specified in Section 85375. The prohibition is consistent with section 80072 Personal Rights and it protects the health and safety of clients in care. This meets the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85302(a)(14)

Specific Propose:

This section is being adopted to prohibit the use of manual restraint or seclusion in excess of 15 consecutive minutes unless the licensee is in compliance with Section 85322(e)(6).

Factual Basis:

This section is necessary to ensure that a client is not subject to a manual restraint or seclusion for more than 15 consecutive minutes as required by Section 1180.4(h) of the

Health and Safety Code. When a client continues to present imminent danger to self or others after the 15 minutes then the licensee would have to follow the provisions established in Section 85322(e)(6) in order to authorize the manual restrain or seclusion to continue. This is necessary to protect the health and safety of clients in care. This is also necessary to serve as a prompt to staff, to reconsider their actions and to determine if the manual restraint or seclusion is absolutely necessary for the well-being and safety of the client.

Section 85302(a)(15)

Specific Purpose:

This section is being adopted to prohibit the use of emergency intervention, which includes manual restraint or seclusion, as a punishment, discipline, harassment, humiliation, coercion or retaliation by facility staff.

Factual Basis:

This section is necessary to reduce the incidence of manual restraint or seclusion and to protect the personal rights of clients in care. This subsection is consistent with Health and Safety Code sections 1180.3(b)(1) and 1180.4(k) and Personal Rights, Section 80072.

Section 85302(b)

Specific Purpose:

This section is being adopted to inform licensees of the restrictions on the use of manual restraint or seclusion.

Factual Basis:

This section is necessary to ensure that the licensee does not use manual restraint or seclusion inappropriately or as a reason not to provide the necessary care and supervision to clients in care.

Section 85302(b)(1)

Specific Purpose:

This section is being adopted to inform licensees that manual restraint or seclusion may not be used as a replacement for staff, or in lieu of adequate staffing.

Factual Basis:

This section is necessary to ensure that the licensee provides adequate staffing to provide care and supervision to clients, including when responding to a crisis. Existing regulations provide minimum staffing requirements as required in regulations; however, if clients in

placement require more intensive supervision due to factors such as problem behaviors, the licensee is expected to provide an enriched staff to client ratio.

Section 85302(b)(2)

Specific Purpose:

This section is being adopted to inform licensees that manual restraint or seclusion may not be used for the convenience of staff.

Factual Basis:

This section is necessary to ensure a licensee is only utilizing the least restrictive intervention needed for the client. This will reduce the incidence of manual restraints and seclusions and, hence, reduce risk of injury to clients. This section is consistent with Health and Safety Code section 1180.4, subsections (j) and (k) and Section 80072, Personal Rights, subsections (a)(1) and (a)(3).

Section 85302(b)(3)

Specific Purpose:

This section is being adopted to prohibit the licensee from using manual restraint or seclusion as a substitute for or as part of a treatment program.

Factual Basis:

This section is necessary to reduce unnecessary manual restraint and seclusion. Limiting manual restraint or seclusion to only those permitted by law will ensure these interventions are only to be used, as specified in this subchapter, to protect the health and safety of the clients during crisis in a safe environment. This section provides clarification to Health and Safety Code section 1180.4, subsection (b).

Section 85302(b)(4)

Specific Purpose:

This section is being adopted to prohibit the licensees from using manual restraint or seclusion as a substitute for, or as part of a behavioral modification program.

Factual Basis:

This section is necessary to ensure that manual restraint or seclusion are not used as part of or as a substitute for a behavior modification program. Restraint or seclusion is only to maintain safety and never to be used for coercion or manipulation. The use of manual restraint is allowed only as an emergency intervention as specified in this subchapter. This section provides clarification to Health and Safety Code section 1180.4, subsection (b).

Section 85302(b)(5)

Specific Purpose/Factual Basis:

This section prohibits the licensee from using an emergency intervention to prevent a client from leaving a room or area or the facility when there is no immediate threat to health and safety of the individual or others. This is necessary to ensure the licensee respects the rights of the client and ensures injury is avoided.

Section 85302(b)(6)

Specific Purpose:

This section is being adopted to establish where the client's medical or physical condition or the Client Medical Assessment indicates that there is reason to believe that the use would endanger the client's life or seriously worsen the client's medical condition.

Factual Basis:

This section is necessary to ensure that the licensee avoids manual restraint or seclusion when a medical or physical condition indicates that there is an increased chance of injuring the client. The purpose of the section is to provide consistency with Health and Safety Code section 1180.4, subsections (d).

Section 85302(b)(7) and Handbook

Specific Purpose:

This section is being adopted to prohibit licensees from using manual restraint or seclusion if it is prohibited by the facility's Emergency Intervention Plan or the client's Individual Emergency Intervention Plan. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to ensure licensees are aware that the facility staff is prohibited from using manual restraint or seclusion if it is prohibited by the facility's Emergency Intervention Plan or the client's Individual Emergency Intervention Plan. This is to ensure that licensees understand the importance of carefully designing their emergency interventions and training in accordance with the Emergency Intervention Plan(s). Manual restraint or seclusion is much safer when they are part of a thoughtful plan conducted by trained staff and supported by meaningful supervision. When staff stray from their training, and from either the facility's Emergency Intervention Plan, and/or the client's Individual Emergency Intervention Plan, the risk of accident and injury is increased. This section is also consistent with Health and Safety Code section 1180.4(j) which requires licensees to use the least restrictive alternative and the maximum freedom of movement, while assuring the safety of clients and others and to use the least number of restraint points.

Article 3, Section 85322 and Titles

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for the Emergency Intervention Plan. The Emergency Intervention Plan is intended to curtail as well as control the use of manual restraint or seclusion in the care of adult residential home clients. In order to best carry out this intent, the regulations specify the overall nature and content of a written plan, "The Emergency Intervention Plan" in order to guide the licensee in including all the necessary and relevant information in such a plan, and ensure that the plan is designed to offer immediate, short-term help to clients who experience an event that produces emotional, mental, physical and behavioral distress or problems that have the potential to result in injury to others. The title of this new section is necessary to meet the clarity standard of the APA, Government Code section 11349, subsection (c) and to meet the requirements of style pursuant to Government Code section 11343.1.

Section 85322(a)

Specific Purpose:

This section is being adopted to clarify that licensees are not only responsible for developing an Emergency Intervention Plan if staff use, or it is reasonably foreseeable that staff will use, manual restraint or seclusion or both; but also having the plan approved by the Department prior to the use of manual restraint or seclusion.

Factual Basis:

This section is necessary to ensure that the licensee's response to a dangerous situation is based on a well thought out approved plan that accounts for all the guidance, training and resources needed to keep clients safe. This will help eliminate inappropriate restraints and seclusions which is also necessary for clarity and consistency. This also is consistent with Health and Safety Code section 1180.4(j), which requires licensees to use the least restrictive alternative and the maximum freedom of movement while assuring the safety of clients and others and to use the least number of restraint points.

Section 85322(a)(1)

Specific Purpose:

This section is being adopted to require applicants and licensees, under specified circumstances, to jointly design and approve the Emergency Intervention Plan with a Behavior Management Consultant. The Emergency Intervention Plan is required to be part of the Plan of Operation.

Factual Basis:

This section is necessary for quality assurance to clarify the applicant or licensee is accountable to bring in a qualified Behavior Management Consultant in developing the Emergency Intervention Plan. A well thought out plan has a direct effect on ensuring staff employ safe and effective emergency interventions with clients. The Behavior Management Consultant brings a higher level of knowledge and professional standards in regard to human behavior and the most appropriate response needed to manage dangerous behavior.

Section 85322(b)

Specific Purpose:

This section is being adopted to require that the Emergency Intervention Plan specify the less restrictive or non-physical de-escalation methods that may be used to identify and prevent behaviors that potentially lead to manual intervention.

Factual Basis:

This section is necessary for clarity and consistency. This is also to ensure the licensee develops emergency intervention techniques that are appropriately matched to the clients in care. This helps to ensure that the interventions are safe and effective. This meets the clarity standard of the APA, Government Code section 11349, subsection (c), and meets the requirements of style pursuant to Government Code section 11343.1.

Section 85322(c)

Specific Purpose:

This section is being adopted to require that the Emergency Intervention Plan specify the techniques that a licensee may use in an emergency when the use of manual restraint or seclusion is necessary to prevent serious physical harm to an individual and no less restrictive or non-physical technique is effective.

Factual Basis:

This section is necessary for clarity and consistency. This ensures the licensee identifies techniques that may be used in an emergency and no less restrictive or non-physical technique is effective. This is necessary to ensure the health and safety of the clients.

Section 85322(d)

Specific Purpose/Factual Basis:

This subsection is being adopted to delineate what the Emergency Intervention Plan will include for clarification and consistency.

Section 85322(d)(1)

Specific Purpose:

This section is being adopted to require licensees to include in the Emergency Intervention Plan, the staff qualifications and staff emergency intervention training sufficient to implement the plan.

Factual Basis:

This section is necessary to ensure that staff qualifications and training are sufficient to implement the plan. When staff qualifications and training are tied to the performance expected of staff, there is a much greater likelihood the plan will be adhered to and that it will be successful. This in turn increases the safety of the client. This section is consistent with Health and Safety Code section 1180.3(b)(1), as this regulation and all of the guidelines within this regulation package will be the foundation for any training and technical assistance developed to meet the requirement of this statute.

Section 85322(d)(2)

Specific Purpose:

This section is being adopted to require the licensee to maintain, at the facility, a list of job titles of the staff required to be trained to use emergency interventions.

Factual Basis:

This section is necessary to ensure the licensee and the Department have the ability to identify the staff allowed to use manual restraint and/or seclusion. This is also necessary to ensure that only trained staff will be applying the emergency interventions. This ensures the health and safety of clients by limiting the use of manual restraint and/or seclusion to those trained individuals. This section is consistent with Health and Safety Code section 1180.3(b)(1), as this regulation and all of the guidelines within this regulation package will be the foundation for any training and technical assistance developed to meet the requirement of this statute and reduce or eliminate manual restraint and/or seclusion.

Section 85322(d)(3)

Specific Purpose:

This section is being adopted to require licensees to include in their Emergency Intervention Plan, a list of emergency intervention techniques that will be used, beginning with the least restrictive intervention.

Factual Basis:

This section is necessary to inform and remind staff of the facility that the use of the most restrictive techniques is only appropriate when other lesser restrictive techniques have been tried and have been unsuccessful. This will help to control the overall use as well as prevent the unnecessary use of restrictive techniques. This section is necessary for clarity, and to maintain consistency with Health and Safety Code section 1180.4, subsection (j).

Section 85322(d)(3)(A)

Specific Purpose/ Factual Basis:

This section is being adopted to require that the Emergency Intervention Plan describes each emergency intervention technique to be used. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(3)(A)1. and Handbook

Specific Purpose:

This section is being adopted to require the prone containment to be used only in compliance with Section 1180.4(f) of the Health and Safety Code. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary for clarity and consistency. This section ensures the licensee is aware of the limitations and caution that must be exercised when prone containment is used. This section is necessary to ensure the health and safety of clients.

Section 85322(d)(3)(B)

Specific Purpose:

This section is being adopted to require licensees to outline in their Emergency Intervention Plan, the maximum time limits for each emergency intervention technique, not to exceed the maximum time limits as specified in Sections 85302(a)(14).

Factual Basis:

This section is necessary for clarity and consistency. This is also necessary to enhance client safety, as it limits the time under which manual restraint and/or seclusion may be used as established in Section 85302(a)(14). These limitations will lessen the use of manual restraint and/or seclusion, which is consistent with Health and Safety Code sections 1180(a) and 1180.4(j) which require licensees to use the least restrictive alternative and the maximum

freedom of movement while assuring the safety of clients and others, and to use the least number of restraint points.

Section 85322(d)(3)(C)

Specific Purpose:

This section is being adopted to require licensees to ensure the Emergency Intervention Plan specifies the purpose or expected outcome for the client that will be achieved by using emergency interventions.

Factual Basis:

This section is necessary to ensure licensees understand and can express the purpose for using emergency interventions. Clarifying expected outcomes are beneficial toward helping licensees focus and fine tune the interventions used in a crisis so they are safe and effective. This is also consistent with Health and Safety Code section 1180(a), which clarifies the intent to reduce the use of seclusion and/or manual restraint as the outcome. Reducing the use of manual restraint and/or seclusion to only when necessary, and ensure safe and effective interventions are being used to provide the optimum service to clients in care.

Section 85322(d)(4)

Specific Purpose:

This section is being adopted to require licensees to describe the circumstances and the types of behaviors for which the use of emergency interventions is needed.

Factual Basis:

This section is necessary to ensure licensees develop internal criteria for the use of emergency interventions. This is necessary to provide clear guidance to facility staff to evaluate crisis situations and determine whether the use of an emergency intervention is appropriate. These informed decisions by facility staff will serve to eliminate inappropriate interventions, protect the safety and personal rights of clients and are consistent with Health and Safety Code section 1180(a).

Section 85322(d)(5)

Specific Purpose:

This section requires licensees to develop procedures for maintaining care and supervision and reducing the trauma of other clients in the facility when staff is required for the use of emergency interventions.

Factual Basis:

This section is necessary to require licensees to develop internal procedures to ensure other clients in care continue to receive the needed care and supervision when staff is involved in emergency interventions. At times of crisis, staff is at greatest risk of neglecting the needs of the clients who are not in crisis and those same clients experience trauma stress associated with the emergency intervention process. This subsection will ensure there is a reasonable plan to provide for all clients in the facility at these vulnerable times. These procedures will also provide clarity to staff and can be used for facility training. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(6)

Specific Purpose:

This section is being adopted to require that licensees develop procedures for crisis situations when more than one client simultaneously require the use of emergency interventions.

Factual Basis:

This section is necessary to require licensees develop a plan for multiple crises to increase the level of safety during emergency interventions. This will also assist licensees in evaluating whether their staffing levels are sufficient. At times of crisis, staff is at greatest risk of neglecting the needs of clients who are not in crisis. These procedures will also provide clarity to staff and can be used for facility training. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(7)

Specific Purpose:

This section is being adopted to require licensees include in the Emergency Intervention Plan, the procedures that will be followed by staff to reintegrate a client into the routine after an emergency intervention.

Factual Basis:

This section is necessary because reintegration is a sensitive time for all clients and staff. A client could re-escalate if reintegration is not executed using a safe plan. For example, the client involved in an emergency intervention may be embarrassed and may require special attention. By eliminating re-escalation of a person coming out of crisis, the licensee will in turn reduce the number of manual restraints and/or seclusions, consistent with Health and Safety Code section 1180, subsection (a).

Section 85322(d)(8)

Specific Purpose:

This section is being adopted to require licensees develop assessment criteria for determining whether an Emergency Intervention Plan should be modified or discontinued.

Factual Basis:

This section is necessary to ensure the Emergency Intervention Plan is currently reflecting the most effective and safe procedures to guide facility staff. This promotes modification of the Emergency Intervention Plan, by a licensee, as needed, and in turn helps ensure the continuing safety of clients in care as the Emergency Intervention Plan is relevant and up to date. This is consistent with Health and Safety Code section 1180.5 as the legislature clearly intended for the licensee and staff to adjust their behavior as they acquire new knowledge gained from the review of incidents.

Section 85322(d)(9)

Specific Purpose:

This section is being adopted to require licensees include, within their Emergency Intervention Plan, criteria for assessing when the facility does not have adequate resources to meet the needs of a specific client.

Factual Basis:

This section is necessary for clarity. This is also necessary to enable the licensee to more accurately assess whether they can serve specific clients. It is critical that licensees know when they do not have adequate resources, as this will enable them to arrange for adequate resources or assist the client in finding a facility that can meet the client's needs. This is consistent with Health and Safety Code section 1180.5(a) which requires that licensee conduct a clinical and quality review for each episode of seclusion or behavioral restraints.

Section 85322(d)(10)

Specific Purpose:

This section is being adopted to require that licensees identify in their Emergency Intervention Plan, the criteria for assessing when community emergency services are necessary to assist staff during emergency interventions.

Factual Basis:

This section is necessary to ensure that staff in an Adult Residential Facility can adequately determine when external community resources are needed. Appropriate community

resources may include local law enforcement and county mental health services. Identifying this need is critical in an emergency. Developing the criteria in advance will save critical time when dealing with a client who is a danger to self or others. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(10)(A)

Specific Purpose:

This section is being adopted to require that licensees list in their Emergency Intervention Plan, which community emergency services will be called upon to assist the facility with a client who is a danger to self or others that does not de-escalate his or her behavior during the emergency intervention process.

Factual Basis:

This section is necessary to ensure that all staff in Adult Residential Facilities are aware of the specific community resources available to assist in a crisis situation when emergency intervention methods applied by the staff do not de-escalate the behavior and imminent danger persists. Appropriate community resources may include local law enforcement and county mental health services. Listing these resources in advance will save valuable time when a crisis occurs. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(11)

Specific Purpose:

This section is being adopted to require licensees to specify in the Emergency Intervention Plan, procedures for ensuring a client in crisis does not injure or endanger self or others.

Factual Basis:

This section is necessary to ensure licensees have a well-developed plan for responding to crisis situations when a client is in danger of hurting self or others. This is also needed to ensure all staff is aware of what action is expected of them to respond to a client who is exhibiting dangerous behavior. For example, the plan may be for staff to utilize verbal interventions or to call in additional staff. In the Department's experience, this plan is also instrumental as a guide for the licensee when they are developing their staff training plan. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(d)(12)

Specific Purpose:

This section is being adopted to require the licensee to develop assessment criteria for determining whether an Individual Emergency Intervention Plan should be modified or discontinued.

Factual Basis:

This section is necessary to ensure the Individual Emergency Intervention Plan is currently reflecting the most effective and safe procedures to guide facility staff. This ensures modification of the Individual Emergency Intervention Plan, by a licensee, as needed, and in turn helps ensure the continuing safety of clients in care as the Individual Emergency Intervention Plan is relevant and up to date. This is consistent with Health and Safety Code section 1180.5 as the intent for the licensee and staff to adjust their behavior as they acquire new knowledge gained from the review of incidents.

Section 85322(d)(13)

Specific Purpose:

This section is being adopted to require the licensee to list in their Emergency Intervention Plan a statement clarifying only trained staff, as required by Section 85365(b), shall use emergency interventions.

Factual Basis:

This section is necessary for clarity and consistency. The section ensures only staff trained and certified in emergency intervention and the use of manual restraint and seclusion are allowed to use emergency interventions. This is necessary to ensure the health and safety of the clients in crisis situations.

Section 85322(e) and (e)(1)

Specific Purpose:

These sections are being adopted to require procedures be developed to ensure the client's safety when a manual restraint or seclusion is used or it is reasonably foreseeable that a manual restraint and/or seclusion will be used. Also, these procedures require the licensee to include and maintain a list of the titles of staff responsible for checking the client's breathing and circulation.

Factual Basis:

These sections are necessary to ensure the client's safety and enable licensees and the Department to compare the titles of persons participating in an emergency intervention with

the titles of persons identified in the plan as being responsible for checking the client's breathing and circulation during a manual restraint or seclusion. This helps to ensure that manual restraint and/or seclusion are being monitored by properly trained staff, which will increase the likelihood that techniques are employed safely. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(e)(1)(A)

Specific Purpose:

This section is adopted to specify that a licensee develop procedures to determine when a medical examination is needed during or after a manual restraint or seclusion as specified in Medical Examination, Section 85369.

Factual Basis:

This section is necessary to ensure clients receive needed medical attention during or after a crisis. This is consistent with Health and Safety Code section 1180.5.

Section 85322(e)(2)

Specific Purpose:

This section is being adopted to require licensees to use a less restrictive, nonphysical intervention if possible during a crisis. The section also requires licensees to include in the Emergency Intervention Plan, procedures for ensuring the use of manual restraint or seclusion or both will not cause injury to the clients or others in the facility.

Factual Basis:

This section is necessary to ensure licensees institute procedures to only allow interventions which will not cause injury to clients or staff, as manual restraint or seclusion can be dangerous if misapplied. This section ensures the licensee will have safety of clients and staff as his or her guiding principle in the development of the Emergency Intervention Plan. This will not only increase safety, but will also contribute to preventing abuse or misuse of manual restraint or seclusion by staff. This is consistent with Health and Safety Code section 1180.5(b)(1) in making safety paramount in importance.

Section 85322(e)(3)

Specific Purpose:

This section is being adopted to require that the licensee has included in the Emergency Intervention Plan, procedures for ensuring the amount of time a client is restrained or

secluded is limited to the amount of time when the client is presenting an immediate danger to self or others.

Factual Basis:

This section is necessary to ensure staff is not applying emergency interventions illegally or inappropriately. This is necessary to protect a client's safety and to ensure the client's personal rights are not violated. This is consistent with Health and Safety Code section 1180.4(b).

Section 85322(e)(4)

Specific Purpose:

This section is being adopted to require staff to respond immediately and appropriately to a client's request for services, assistance and repositioning. This additional requirement establishes the duty of staff to respond immediately to the client's request.

Factual Basis:

This section is necessary to be consistent with the clients' personal right of dignity, as required by Section 80072, subsection (a)(1). This also increases safety as it helps to calm the client and reduces agitation. This clarifies that although a client may be in crisis, their rights are not forfeited.

Section 85322(e)(5)

Specific Purpose:

This section is being adopted to list what must be included in an assessment during the continued use of a manual restraint or seclusion.

Factual Basis:

This section is necessary for clarity and consistency to inform the licensee that from the start through the duration of a manual restraint or seclusion, an assessment must be performed and include several considerations that will ensure the health and safety of the client.

Section 85322(e)(5)(A)

Specific Purpose:

This section is being adopted to require the Emergency Intervention Plan to include procedures for ensuring an assessment that includes a visual check of the client's physical well-being and breathing and circulation are not impaired, during a manual restraint or seclusion.

Factual Basis:

This section is necessary for clarity and consistency to inform the licensee that an assessment, conducted during the use of a manual restraint or seclusion, must include a visual check of the client's well-being. This section is necessary to provide for a visual evaluation of a manual restraint or seclusion by a neutral person not participating in the restraint or seclusion of the client, as it will ensure greater objectivity in decision making and safety during the crisis. It is necessary that this staff be objective, and not involved in the manual restraint or seclusion as this will afford him/her the ability to make a more balanced and sound decision that will ensure the health and safety of a client during a manual restraint or seclusion. This is consistent with Health and Safety Code section 1180.4(c)(1).

Section 85322(e)(5)(B)

Specific Purpose:

This section is being adopted to require the Emergency Intervention Plan to include procedures for ensuring that a trained staff person, who is not involved in the manual restraint or seclusion, will evaluate whether community emergency services need to be called during the continued use of a manual restraint or seclusion.

Factual Basis:

This section is necessary to ensure a client's safety as well as the safety of other persons within the facility. If the client continues to present an imminent danger of serious harm to self or others, an assessment evaluating whether or not to contact and seek assistance from emergency services must be done. This assessment ensures that the licensee is aware of the resources available and requires the licensee to consider whether emergency services are required. This is consistent with Health and Safety Code section 1180.5(b)(1) as it makes safety of the client paramount in importance.

Section 85322(e)(5)(C)

Specific Purpose:

This section is being adopted to require the Emergency Intervention Plan to include procedures for ensuring an assessment of the client's safety during a manual restraint.

Factual Basis:

This section is necessary to ensure that a neutral and objective person will evaluate the safety of the client during a manual restraint or seclusion. This assessment will ensure the health and safety of the client and is necessary for clarity and consistency.

Section 85322(e)(5)(D)

Specific Purpose:

This section is being adopted to require the Emergency Intervention Plan to include procedures for ensuring an assessment of the safety of staff involved during a manual restraint or seclusion.

Factual Basis:

This section is necessary to ensure the safety of the staff involved in the manual restraint of seclusion. This determination made by a trained staff who is not involved in the manual restraint or seclusion will help ensure greater objectivity during the crisis situation. It is necessary for the health and safety of the staff, the client being restrained or secluded as well as the safety of the other clients not involved in the crisis.

Section 85322(e)(5)(E)

Specific Purpose:

This section is being adopted to require the Emergency Intervention plan to include procedures for ensuring an assessment that determines if the client's behavior poses an imminent risk of serious physical harm.

Factual Basis:

This section is necessary to ensure that restraint or seclusion is used for the least amount of time possible. If it is determined that a client's behavior no longer poses an imminent risk of serious physical harm, the restraint or seclusion is ceased. This is consistent with Health and Safety Code section 1180.4(b).

Section 85322(e)(5)(F)

Specific Purpose:

This section is being adopted to require the Emergency Intervention Plan to include procedures for ensuring an assessment of whether or not a less restrictive intervention is warranted during a manual restraint or seclusion.

Factual Basis:

This section is necessary to be consistent with the clients' personal right of dignity, as required by Section 80072, Subsection (a)(1). This also increases safety as it reduces the use of restrictive intervention that is not warranted. This section is also consistent with Health and Safety Code section 1180.4(j).

Section 85322(e)(6)

Specific Purpose:

This section is being adopted to require staff to discontinue a manual restraint or seclusion after 15 consecutive minutes.

Factual Basis:

This section is necessary to protect the health and safety of the client. This section is necessary to prevent continued use of manual restraint or seclusion when it is not needed. This section is consistent with Health and Safety Code section 1180.4(h).

Section 85322(e)(6)(A)

Specific Purpose:

This section is being adopted to provide an exception to the 15 minute limitation specified in Section 85322(e)(6) when there is a need to protect the immediate health and safety of the client or others from risk of imminent serious physical harm, provided that concurrent approval is obtained by the certified administrator for every exception.

Factual Basis:

This section is necessary to protect the health and safety of the client. This section prevents the client from being released from a manual restraint or seclusion when there is still a risk of imminent serious physical harm. The requirement for concurrent approval for every exception from the certified administrator, who would provide an informed and objective higher level decision, is necessary to protect the clients and prevents abuse and misuse of restraint and seclusion by staff. This is consistent with Health and Safety Code section 1180.4(h).

Section 85322(e)(6)(A)1.

Specific Purpose:

This section is being adopted to require documentation, in the client record within 24 hours, of the administrator's approval of the extended use of manual restraint or seclusion beyond 15 minutes.

Factual Basis:

This section is necessary to protect the health and safety of the client. The requirement for the administrator to provide a rationale for the continued use of a manual restraint or seclusion prevents the administrator from arbitrarily allowing the client to be restrained or left in seclusion. This also provides a detailed record of the client's imminently dangerous behavior and will provide further insight into future interventions.

Section 85322(e)(6)(A)2.

Specific Purpose:

This section is being adopted to prohibit the certified administrator, who provides approval for an exception to the 15 minute limitation specified in Section 85322(e)(6)(A), from being a participant in the manual restraint.

Factual Basis:

This section is necessary to ensure the certified administrator is able to objectively determine whether there is a continued need to protect the immediate health and safety of the client or others from risk of imminent serious physical harm.

Section 85322(e)(7)

Specific Purpose:

This section is being adopted to require the licensee to outline in the Emergency Intervention Plan, the procedures to ensure the safety of clients and staff in the event the client continues to pose an immediate serious danger to self or others after 15 consecutive minutes of manual restraint or seclusion.

Factual Basis:

This section is necessary to require the licensee to plan for safety measures when a manual restraint or seclusion must be extended beyond 15 minutes. This section is necessary to protect the health and safety of the clients as it will require staff to be more prepared during a crisis.

Section 85322(e)(8)

Specific Purpose:

This section is being adopted to instruct licensees that specific procedures are needed to instruct staff when seclusion occurs.

Factual Basis:

This section is necessary to ensure the safety of client and staff. This section also meets the clarity standard of the APA, Section 11349(c) of the Government Code, and the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule.

Section 85322(e)(8)(A)

Specific Purpose:

This section is being adopted to require, when a client is placed in seclusion, trained staff to maintain direct visual contact with the client at all times and have no other responsibility other than observation of the client during the seclusion, until the intervention is discontinued. The visual contact shall not be through video and/or audio equipment or electronic transmission of images.

Factual Basis:

This section is necessary to ensure that the staff can immediately respond to any safety needs of the client, particularly so the client does not engage in self-injurious behavior. This also ensures that the client is not abandoned during the crisis. This section is necessary to meet the clarity standard of the APA, Section 11349(c) of the Government Code, and the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule. This is consistent with Health and Safety Code section 1180.5(i) as it makes safety of the client paramount in importance.

Section 85322(e)(8)(A)1.

Specific Purpose:

This section is being adopted to instruct licensees that staff is required to remain in the seclusion room being used, during the period of danger when the client may be inclined to be harmful to self or others.

Factual Basis:

This section is necessary to provide the close proximity to the client when it is necessary for the client's safety. This is consistent with Health and Safety Code section 1180.5(b)(1) as it makes safety of the client paramount in importance.

Section 85322(e)(8)(B)

Specific Purpose:

This section is being adopted to require that if seclusion occurs, staff must reasonably ensure there are no objects in the client's possession that could be used to cause injury to self or others while in the Seclusion room.

Factual Basis:

This section is necessary to ensure staff takes precautionary action that would prevent and protect clients in crisis from using any object to injure themselves or others while in the

Seclusion room. This is consistent with Health and Safety Code section 1180.5(b)(1) as it makes safety of the client paramount in importance.

Section 85322(e)(8)(C)

Specific Purpose:

This section is being adopted to prohibit the placement of more than one client in a protective separation room at any time.

Factual Basis:

This section is necessary to prevent a client in crisis who is exhibiting dangerous behavior from causing harm to another client. This is also to prevent any further stimulation which might escalate a client in crisis. This is consistent with Health and Safety Code section 1180.5(b)(1) as it makes safety of the client paramount in importance.

Section 85322(e)(9)

Specific Purpose:

This section is being adopted to require licensees develop procedures for documenting manual restraint or seclusion incidents in the client's record. The procedures are to be included in the Emergency Intervention Plan.

Factual Basis:

This section is necessary to ensure licensees develop standard procedures for the recording of manual restraint or seclusion incidents in the client's record, and is consistent with section 80061(b)(1)(E) Reporting Requirements. This is necessary to ensure all staff is aware of the procedures. This also increases accountability which in turn increases the safety of the client.

Section 85322(e)(10)

Specific Purpose:

This section is being adopted to require licensees further review each use of manual restraint or seclusion, as specified in Section 85368.3 in order to ensure that the event will be considered shortly afterward in a debriefing to assess how to best avoid a similar incident in the future.

Factual Basis:

This section is necessary to be consistent with sections 85368.3 Manual Restraint or Seclusion Review, 80061 Reporting Requirements, 85361 Emergency Intervention Documentation and Reporting Requirements and Health and Safety Code section 1180.5. The client and the client's representative, if any, need the opportunity to be involved in the

review so they can contribute essential information as to how to reduce the use of manual restraint and seclusion and to ensure the client's safety.

Section 85322(e)(11)

Specific Purpose:

This section is being adopted to require licensees develop procedures for ensuring access to necessary community emergency services, including but not limited to emergency response person, when the use of emergency interventions is not effective or appropriate.

Factual Basis:

This section is necessary for the safety of clients. In an emergency, staff is more likely to follow a safe plan when it is written and there is an expectation by the licensee to follow the plan. Involving community resources when needed will help to reduce the use of restraint and seclusion, as required by Health and Safety Code section 1180(a), as this gives the staff guidance to help them assess when the emergency is beyond their ability to resolve.

Section 85322(e)(12)

Specific Purpose:

This section will require licensees to develop procedures which ensure that staff is aware of a client's medical or physical condition(s) which may limit or prohibit the use of manual restraint or seclusion and that staff will comply with any limitation or prohibition.

Factual Basis:

This section is necessary to protect the health and safety of clients who have medical and physical conditions which may limit or prohibit the use of manual restraint or seclusion. By developing a plan for educating staff, training and preparing for the unique needs of the clients, the licensee will ensure that staff will be able to avoid worsening a medical or physical condition or causing pain. This will also help to reduce the use of restraint and seclusion, consistent with Health and Safety Code sections 1180 and 1180.4.

Section 85322(e)(13)

Specific Purpose:

This section is being adopted to require the presence of adequate staff to supervise the other clients in care, when other staff is involved in an emergency intervention.

Factual Basis:

This section is necessary to ensure client safety by requiring that additional staff be readily available as back-up to provide supervision of clients in care when other facility personnel

are involved in an emergency intervention. This section is consistent with the responsibility to provide care and supervision and provides clarity as to when supervision is adequate. This section is consistent with Health and Safety Code section 1531.

Section 85322(f)

Specific Purpose:

This section is being adopted to require that the licensees prepare an Emergency Intervention Training Plan, which is to be included as a component of the Emergency Intervention Plan.

Factual Basis:

This section is necessary to ensure the staff is appropriately trained. This implements training requirements as set forth in Health and Safety Code sections 1180(c), 1567.64 and 1567.82 by requiring facilities to develop their training plan.

Sections 85322(f)(1) through (f)(6)

Specific Purpose:

These sections are being adopted to require licensees to include the following in the Emergency Intervention Training Plan: 1) the course type, title, and a brief description of the emergency intervention training that facility personnel will have completed; 2) the training requirements for new facility personnel; 3) the ongoing refresher training plans for existing facility personnel; 4) the training curriculum; 5) the qualifications of the emergency intervention trainers; and 6) evidence that the training plan is based on research and that the training topics are appropriate for the client's population and services provided by the facility.

Factual Basis:

These sections are necessary to ensure the staff is appropriately trained. This implements training requirements as set forth in Health and Safety Code section 1180(c) by requiring facilities to develop their training plan.

Section 85322(g)

Specific Purpose:

This section is being adopted to require licensees to include in an Emergency Intervention Plan the procedures to be used for an internal six month review of the use of manual restraint and seclusion.

Factual Basis:

This review provides the licensee the opportunity to evaluate the facility's performance and amend their plan in order to reduce manual restraints and seclusions. This is consistent with

Health and Safety Code section 1180(a) and increases the safety of the clients as it provides the opportunity for the licensee to take a broader view of their use of manual restraint or seclusion. This will allow the licensee to address trends and statistics over time which will complement their reviews of individual manual restraints and seclusions. This added information will be instructive for the licensee to amend his/her Emergency Intervention Plan and to reduce the use of manual restraint or seclusion, consistent with Health and Safety Code section 1180.3(b)(1).

Section 85322(g)(1)

Specific Purpose:

This section is being adopted to require the administrator or the administrator's designee and the Qualified Behavior Modification Professional to conduct the six month review of emergency intervention incidents.

Factual Basis:

This section is necessary because the administrator is ultimately responsible for the overall management of the facility and the Qualified Behavior Modification Professional provides expertise on client behavior and modifications that are needed. They are best suited to follow through with ensuring the client's health and safety are protected. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85322(g)(2) through (g)(2)(C)

Specific Purpose:

These sections require an analysis of patterns and trends related to the use of manual restraints and seclusions in the previous six months, based on a review of:

- 85322(g)(2)(A) the accuracy and completeness of records related to manual restraints and seclusions;
- 85322(g)(2)(B) the outcome, duration and appropriateness of the manual restraint or seclusion used in each situation; and
- 85322(g)(2)(C) the frequency of manual restraints and seclusions.

Factual Basis:

These sections are necessary to assist the licensee in identifying situations which repeatedly have resulted in the use of emergency interventions. The trend analysis may identify conflicts between specific staff members and clients, or client specific situations (e.g. a client may exhibit assaultive behavior in the days preceding holidays). This review provides the licensee the opportunity to evaluate the facility's performance and amend their plan in order to reduce manual restraints and seclusions. This is consistent with Health and Safety Code section

1180(a) and increases the safety of the clients. This is also consistent with Health and Safety Code section 1180.3(c) which requires data be compiled in a manner that allows for standard statistical comparison.

Section 85322(g)(3)

Specific Purpose:

This section is being adopted to require licensees develop procedures to resolve problems identified in the six month review, of emergency interventions, which include the development of a corrective action plan, including but not limited to amendments to the Emergency Intervention Plan, or to other internal procedures.

Factual Basis:

This section is necessary to ensure licensees have a procedural plan in place to take corrective steps to resolve problems identified in the six month review. An example of a corrective action may be retraining of facility personnel in a specific emergency intervention technique. This will ensure that the licensee conduct continual quality improvement in order to increase client safety and reduce the number of manual restraints and seclusions, consistent with Health and Safety Code section 1180(a).

Section 85322(h)

Specific Purpose:

This section is being adopted to require that the six month review, corrective action plan and a copy of all emergency intervention incident reports be maintained at the facility and be accessible to the licensing agency.

Factual Basis:

This section is necessary to ensure that the licensing agency can verify that the licensee has completed their six month review and corrective action plan. This accountability will ensure that the licensee conducts continual quality improvements in order to increase client safety and reduce the number of manual restraints and seclusions, consistent with Health and Safety Code section 1180(a).

Section 85322(h)(1)

Specific Purpose:

This section is being adopted to require that the licensee document when no manual restraint or seclusion has occurred.

Factual Basis:

This section is necessary to ensure that the licensing agency can review the six month review and know which client(s) have not needed emergency interventions. This accountability will ensure that the licensee conducts continual quality improvements in order to increase client safety and reduce the number of manual restraints and seclusions, consistent with Health and Safety Code section 1180(a).

Section 85322(h)(2)

Specific Purpose:

This section is being adopted to require licensees to maintain a copy of written incident reports in the client's record and make available to the licensing agency for review.

Factual Basis:

This section is necessary to ensure the client's written incident reports are maintained in the client's file. This will assist the authorized representative to make more informed decisions regarding the placement of the client. This is consistent with Health and Safety Code section 1180.5(a).

Section 85322(i)

Specific Purpose:

This section is being adopted to ensure that the licensee provides a copy of the six-month review and applicable corrective plan to the client's authorized representative if requested.

Factual Basis:

This section is necessary to ensure the client's authorized representative may review the six-month review. This will assist the authorized representative to make more informed decisions regarding the placement of the client.

Section 85322(j) through (j)(2)

Specific Purpose:

These sections are being adopted to require licensees to discontinue use of manual restraint or seclusion or both immediately under the following circumstances: 1) Under Subsection 85322(j)(1) this discontinuance occurs if the licensee has used manual restraint or seclusion and has been cited for non-compliance with this subchapter, Sections 80072, or 85072 and 2) Under Subsection 85322(j)(2) this discontinuance occurs if the Department has provided written notice to the licensee prohibiting the use of manual restraint or seclusion.

Factual Basis:

These sections are necessary to ensure the safety of clients. Licensees will be prohibited from using manual restraint or seclusion when determined unsafe by the licensing agency. This will also help reduce manual restraints and seclusions, and is consistent with Health and Safety Code section 1180(a).

Section 85361 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a new article, titled "Continuing Requirements" and a new section, titled "Emergency Intervention Documentation and Reporting Requirements" in order to introduce regulations pertaining to the reporting of emergency intervention incidents. The title is necessary for clarity and consistency with existing formatting within this chapter.

Section 85361(a)

Specific Purpose:

This section is being adopted to require that licensees report to the client's authorized representative, if any, by telephone, no later than the next calendar day, for each use of manual restraint or seclusion, and that the report (which includes the type of emergency intervention used, the duration of the manual restraint or seclusion, the time the event was reported to the authorized representative, and the time and response of the authorized representative) shall be documented in the client's file.

Factual Basis:

This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c). This section is necessary to establish time frames and methods for reporting the use of manual restraints or seclusions and to ensure the authorized representative is aware of these incidents as the information may affect placement issues. Reporting by telephone enables the authorized representative to ask questions about the event. Existing Title 22 regulations, (section 80061(e) Reporting Requirements) already requires licensees, or licensee's designees, to report any unusual incident which threatens the physical or emotional health or safety of any client to the authorized representative. This subsection further clarifies that each manual restraint or seclusion requires a report be made to the client's authorized representative by the licensee within a specific time frame.

Section 85361(b)

Specific Purpose:

This section is being adopted to clarify the time frames and method by which a licensee is required to report manual restraints or seclusions to the Department. This section requires the licensee to report each use of manual restraint or seclusion to the Department no later

than the Department's next business day. This section also clarifies that the reporting timeframe of the use of manual restraint or seclusion replaces that as specified in Section 80061(b).

Factual Basis:

This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c). This section is necessary to establish clear and measurable timeframes by which the licensee is required to report these incidents to the licensing agency. This will enable the department to be aware of the use of manual restraints or seclusions and to investigate whether safe interventions are being employed. The short turnaround time is necessary to ensure statements regarding manual restraint or seclusion are reported while recollection is still fresh. This supersedes the requirement in section 80061(b) in order to avoid duplicate reports by the licensee.

Section 85361(b)(1)

Specific Purpose:

This section is being adopted to require the administrator or administrator's designee to review, for accuracy and completeness, and sign the report of the use of manual restraint or seclusion.

Factual Basis:

This section is necessary to ensure the administrator/designee is aware of and reviews documentation pertaining to the use of manual restraint or seclusion for accuracy and completeness. This is also important as it supports the Department's efforts in meeting the legislative intent of Health and Safety Code section 1180.3(c)(1). This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(b)(2)

Specific Purpose:

This section is being adopted to ensure that the plan of corrective action for any manual restraint or seclusion that was not part of the Emergency Intervention Plan or the Individual Emergency Intervention Plan shall, if necessary, require staff to repeat emergency intervention training. Within 24 hours upon the discovery of the non-compliance, the licensee shall submit a plan of corrective action to the licensing agency describing how he or she will ensure there is no recurrence of the violation. This section clarifies that this requirement shall not impede upon the Department's authority to enforce applicable statutes and regulations or initiate administrative action.

Factual Basis:

This section is necessary to ensure that health and safety of the client is being met at all times. This section ensures there is continuous quality improvement that directly protects the health and safety of clients in care. This will help prevent future restraint and seclusion. This also helps implement Health and Safety Code sections 1180.5(c) and (d).

Section 85361(c)

Specific Purpose:

This section is being adopted to clarify the content of reports, specified in Section 85361(b), used to report a manual restraint or seclusion.

Factual Basis:

This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(1)

Specific Purpose:

This section is being adopted to clarify the content of incident reports, and require that the reports include a description of the client's behavior that required the use of manual restraints or seclusions, and description of the precipitating factors, including behaviors of others, which led to the intervention.

Factual Basis:

This mention of the client's behavior leading to the use of manual restraints or seclusions would be extremely important in flagging and/or preventing any misuse of emergency intervention. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(2)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b), and require that the reports include a description of what manual restraints were used, how long the client was restrained or secluded, and if the restraint resulted in the use of seclusion.

Factual Basis:

This mention of the length of time of restraint or seclusion, as well as types of manual restraints or seclusions, would be extremely important in flagging and/or preventing any

misuse of emergency intervention. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(3)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b), and require that the reports include description of what non-physical interventions were utilized prior to the use of the manual restraint or seclusion; explanation of why more restrictive interventions were necessary.

Factual Basis:

This mention of any non-physical interventions utilized prior to the use of the manual restraint or seclusion, as well as articulation of the reasoning behind using manual restraint or seclusion, would be extremely important in flagging and/or preventing any misuse of emergency intervention. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(4)

Specific Purpose:

This section is being adopted to clarify the content of any reports specified in Section 85361(b), and require that the reports include the client's verbal response and physical appearance, including a description of any injuries at the completion of the manual restraint or seclusion, whether they are related to the manual restraint or seclusion, and how the licensee became aware of the injury.

Factual Basis:

This mention of the client's verbal and physical appearance as well as the injuries at the completion of the manual restraint or seclusion and whether they are related, would be extremely important in flagging and/or preventing any misuse of emergency intervention. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(5)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b), and require that the reports include a description of injuries sustained by the client or facility

personnel, type of medical treatment sought, and where the client was taken, or alternatively, an explanation of why medical treatment was not sought.

Factual Basis:

This mention of description of injuries, and type of medical treatment sought, and/or explanation for lack of medical treatment would be extremely important in flagging and/or preventing any misuse of emergency intervention. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(6)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b), and require that the reports include name(s) of facility personnel who participated in or witnessed the manual restraint or seclusion.

Factual Basis:

This clarification of any witnesses or participants in the manual restraint or seclusion would be extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This subsection meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(7)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b), and require that the reports include the name(s) of the certified administrator who approved the continuation of the manual restraint or seclusion for more than 15 minutes.

Factual Basis:

This clarification of the facility personnel who approved the continued use of manual restraint or seclusion would be extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(8)

Specific Purpose:

This section is being adopted to clarify, in the event that the facility personnel did not adequately attempt to prevent the manual restraint or seclusion, that the report specified in Section 85361(b) will include a description of what action should have been taken by facility personnel to prevent the manual restraint or seclusion and what corrective action will be taken or not taken and why.

Factual Basis:

This clarification of any preventive actions and corrective action taken or not, and why, in cases where manual restraint or seclusion was not adequately prevented, is extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(9)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b) and requires the reports include a detailed description of any incident where law enforcement was involved. This detailed description specific to law enforcement involvement would essentially describe when the emergency intervention techniques used by the facility fail and be the basis for understanding how to avoid a similar situation in the future.

Factual Basis:

This clarification and detailed record of any contact with law enforcement related to an incident of manual restraint or seclusion would be extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(c)(10)

Specific Purpose:

This section is being adopted to clarify the content of reports specified in Section 85361(b) and requires the reports include the date and time of other manual restraints or seclusions involving the same client in the past 24 hours.

Factual Basis:

This clarification and detailed record of the date and time of other manual restraints or seclusions involving the same client in the past 24 hours would be extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(d)

Specific Purpose:

This section is being adopted to require continued use of manual restraint or seclusion for more than 15 minutes to be documented in accordance with Section 85322(e)(6)(A)1.

Factual Basis:

This section is necessary to ensure clarity and consistency in the requirement for documentation of the continued use of manual restraint or seclusion.

Section 85361(e)

Specific Purpose:

This section is being adopted to require that a copy of the incident report be available for review, inspection, audit or copy upon request by the Department as specified in Section 80070(d), which outlines the rights and responsibilities of the Department regarding access to client records.

Factual Basis:

This availability of an incident report would be extremely important in flagging and/or preventing any misuse of emergency intervention, as well as taking any necessary action in enforcement of these regulations. This section will facilitate the Department's oversight role. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(f)

Specific Purpose:

This section clarifies the requirement for staff who participated in a seclusion or restraint to document the incident and plan for corrective action in a timely manner, no later than the end of the same working shift of each staff member(s).

Factual Basis:

This section is necessary as the timely recording of this information diminishes the risk of memory degradation or false memories. This regulation complements Section 85368.3(a) (Manual Restraint or Seclusion Review) which requires the administrator to discuss the manual restraint or seclusion incident with facility personnel involved within 24 hours. This is also consistent with Health and Safety Code section 1180.5(b) as an accurate report will enable the licensee to develop safe plans for potential future emergencies. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85361(g)

Specific Purpose:

This section is being adopted to clarify the requirement of licensees to maintain a written monthly log at the facility reporting each manual restraint or seclusion.

Factual Basis:

This section is necessary to assist the licensee and the Department in determining whether there is a pattern associated with a client or staff member and the use of Emergency Interventions that may need to be amended. This is also important as it supports the Department's efforts in meeting the legislative intent of Health and Safety Code section 1180.3(c)(1).

Sections 85361(g)(1) through (g)(12)

Specific Purpose:

These sections are being adopted to clarify the required content of the log mentioned in 85361(e). The log shall include: 1) Name of each client; 2) Date and time of the manual restraint or seclusion; 3) Duration of time of the manual restraint or seclusion; 4) Behavior of others connected to the incident and factors that contributed to the incident; 5) Name(s) and job title(s) of staff who participated in the manual restraint or seclusion; 6) Name of the certified administrator that approved the continuation of the manual restraint or seclusion for more than 15 minutes, if applicable; 7) Description of the manual restraint or seclusion and type used, and the outcome to the client and staff, including injury or death and whether the injury to a client or staff was serious as defined in Health and Safety code Section 1180.1(g); 8) The total monthly number of manual restraints and seclusion; 9) The total monthly number of serious injuries to clients as a result of manual restraint or seclusion; 10) The total monthly number or non-serious injuries to clients as a result of manual restraint or seclusion; 11) The total monthly number of serious injuries to staff as a result of manual restraint or seclusion, and; 12) The number of deaths that occur while the client is in a manual restraint or seclusion, or where it is reasonable to assume that a death was related to the use of manual restraint or seclusion. Handbook is provided for ease of use.

Factual Basis:

This information enables the licensee and the licensing agency to have the necessary data to analyze the interventions used so that unsafe situations can be eliminated while safe and successful interventions can continue to be utilized to ensure the safety of clients. This also includes the data required by Health and Safety Code section 1180.3(c)(4).

Section 85361(h)

Specific Purpose:

This section is being adopted to clarify for licensees, the Department's rights to review, inspect, audit and copy the log specified in 85361(g).

Factual Basis:

This section is necessary to enable the Department to exercise its oversight authority and to provide historic references to support the data collection required by Health and Safety Code section 1180.3(c)(4) upon funding to the Department for the tools necessary to aggregate the data.

Section 85365 and Title

Specific Purpose/Factual Basis:

This section is adopted to create a section for "Emergency Intervention Staff Training" in order to introduce regulations pertaining to the requirements for emergency intervention staff training. The title is necessary for clarity and consistency with existing formatting within this Chapter.

Section 85365(a)

Specific Purpose:

This section is being adopted to require that staff using emergency intervention techniques shall be restricted to using those techniques specified in the Emergency Intervention Plan and which are not prohibited in section 85302 Emergency Intervention Prohibitions.

Factual Basis:

This is important to prevent harm to a client from a staff member who is applying techniques that are not part of the facility Emergency Intervention Plan. This subsection is consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(b)

Specific Purpose:

This section requires all staff who will use, participate in, approve or provide visual checks for manual restraint or seclusion, to have a minimum of 16 hours of emergency intervention training and be certified for having successfully completed the training.

Factual Basis:

This section is necessary to provide staff with the skillset to ensure the techniques are performed properly, as that will protect the safety of clients. The minimum of 16 hours is based on the Department's experience with Group Homes that provide manual restraint and seclusion training. This subsection is also being added to implement Health and Safety Code sections 1180(c), 1567.64 and 1567.82.

Section 85365(b)(1)

Specific Purpose:

This section requires staff, who use, participate in, approve or provide visual checks of manual restraints and/or seclusions, to be trained in the manual restraint or seclusion technique utilized.

Factual Basis:

This section is necessary to ensure that staff has the knowledge base and practice in using the technique. When staff uses emergency intervention techniques without training, it increases the risk to the health and safety of clients. This subsection is consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(b)(2)

Specific Purpose:

This section requires the staff to maintain a valid certificate to show that they are currently certified for successfully completing the required emergency intervention training.

Factual Basis:

This section is necessary to ensure staff receive proper instruction and possess proper skills in using emergency interventions, which include manual restraint or seclusion. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(b)(3)

Specific Purpose:

This section is being adopted to require the staff to have a minimum of 6 hours of annual refresher training, following the initial training certification that includes the provisions specified in section 85365 (c)-(e) and (g).

Factual Basis:

This section is necessary to ensure staff who has received training certification review what they were previously trained on. This prevents the misapplication of intervention techniques and can improve the staff's general knowledge of the interventions.

Section 85365(c)

Specific Purpose:

This section is necessary to require staff training to be provided by an individual holding a valid instructor certificate from a program for preventing and safely managing dangerous behavior. The licensee shall maintain and make available a copy of the trainer's certificate for the licensing agency to review.

Factual Basis:

This section is necessary because qualified trainers ensure that staff has the knowledge and techniques in using emergency interventions. In the Department's experience with Group Homes who provide manual restraint and seclusion training, a trainer who is certified is much more likely to deliver sound material that is research based and proven to be safe than a trainer who is not certified. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(d)

Specific Purpose:

This section is being adopted to inform licensees that there are required components to be included in the emergency intervention training curriculum.

Factual Basis:

This section is necessary to specify the content of the emergency intervention training curriculum. This is necessary to ensure the training curriculum is comprehensive enough to prepare staff in an appropriate manner when an intervention is required, and to implement Health and Safety Code sections 1567.64 and 1567.82. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Sections 85365(d)(1) through (d)(6)

Specific Purpose:

These subsections are being adopted to specify the emergency intervention training curriculum, which shall include: 1) Techniques of group and individual behavior management, including, but not limited to, crisis prevention and intervention, positive behavioral supports, and precipitating factors leading to assaultive behavior; 2) Methods of de-escalating volatile situations, including, but not limited to, non-physical intervention techniques such as crisis communication or evasive techniques; 3) Alternative methods of handling aggressive and assaultive behavior; 4) If the licensee chooses to use manual restraint, the techniques of applying manual restraint in a safe and effective manner ranging from the least to most restrictive type(s) of manual restraint including, but not limited to, escorting, wall restraint, and floor containment; 5) Techniques for reintegrating the client back into the facility routine after the need for the emergency intervention has ceased; and 6) Methods of assessing client specific information regarding how to keep a client safe.

Factual Basis:

These sections are needed to provide a comprehensive learning scheme to ensure staff understand and learn about the assessment, appropriate techniques, and alternatives methods relating to emergency interventions in order to be effective in ensuring the safety of a client who is in crisis. This section is consistent with Health and Safety Code section 1180.4(a)(1) through (5).

Section 85365(e)

Specific Purpose:

This section is being adopted to require a written competency test and a hands-on competency test to be administered by a certified trainer, who shall be present for the hands-on competency test, as required by the Title 17 provisions that detail the components of these tests.

Factual Basis:

This section is necessary to ensure the staff understand and retain the information. The written and hands-on competency tests ensure the staff understand and can demonstrate safe methods of manual restraint or seclusion which ensures the safety of clients. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(f)

Specific Purpose:

This section is being adopted to inform the licensee that there are additional training requirements for the administrator who will approve the continued use of a manual restraint or seclusion.

Factual Basis:

This section is necessary to specify the content of the additional training curriculum. This is necessary to ensure the training curriculum is comprehensive enough to prepare staff, who approve the continued use of a manual restraint or seclusion. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85365(f)(1) through (f)(7)

Specific Purpose:

These subsections are being adopted to specify the additional training, which shall include: 1) Techniques to identify staff and client behaviors, events and environmental factors that may trigger circumstances that require the use of manual restraints or seclusions; 2) The use of nonphysical intervention skills; 3) Choosing the least restrictive intervention based on the individualized assessment of the client's medical, or behavioral status or condition; 4) The safe application and use of all types of manual restraints or seclusions permitted in the facility; 5) Identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary; 6) Monitoring the physical well-being of the client who is being manually restrained or secluded; 7) Current first aid certification and current certification in the use of cardiopulmonary resuscitation.

Factual Basis:

These sections are needed to provide a comprehensive training to ensure the administrator who will approve the continued use of a manual restraint or seclusion, understand and learn about the assessment, appropriate techniques and alternatives methods relating to emergency interventions in order to be effective in ensuring the safety of a client who is in crisis.

Section 85365(g)

Specific Purpose:

This section is being adopted to ensure all direct care staff and any other person in their direct management chain, up through and including the licensee, are trained in the facility Emergency Intervention Plan and on each client's Individual Emergency Intervention Plan.

Factual Basis:

This section is necessary to ensure all direct care staff and any other person in their direct management chain, up through and including the licensee, are aware of the facility's Emergency Intervention Plan and on each client's Individual Emergency Intervention Plan. This requires the staff to be knowledgeable on each client's behaviors, triggers, and intervention techniques preferred. This is necessary to ensure the clients are properly cared for in a manner that was approved by the trained professionals who approved the Emergency Intervention Plan and the Individual Emergency Intervention Plans.

Section 85365(h)

Specific Purpose:

This section is being adopted to require that licensees maintain a written record of the training provided to staff.

Factual Basis:

This section is necessary to enable and assist the licensee in evaluating their training protocols to ensure they are safe and effective. It also ensures the licensee is aware and accountable for using facility personnel who are trained to utilize emergency interventions in crisis. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(h)(1)

Specific Purpose:

This section is being adopted to require licensees to maintain documentation of the emergency intervention training, which includes manual restraints or seclusions, received by each staff member in his or her personnel record.

Factual Basis:

This section is necessary to enable the Department to provide adequate oversight for accountability. This also assists the licensee in evaluating an individual staff's training to ensure it is adequate. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(h)(1)(A)

Specific Purpose:

This section is being adopted to require licensees to document the date, hours and description of training received, including the name of the instructor and organization that provided the training.

Factual Basis:

This section is necessary to enable the Department to provide adequate oversight for accountability. This also assists the licensee in evaluating an individual staff's training to ensure it is adequate and meets the training requirement as specified in the Emergency Intervention Plan. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85365(h)(1)(B)

Specific Purpose:

This section is being adopted to require that the personnel record of each staff member who has successfully completed emergency intervention training contain written verification from the instructor that each staff member successfully completed the training and passed the competency test(s).

Factual Basis:

This section is necessary to help verify that if staff is going to use emergency interventions, which include manual restraint or seclusion, they have acquired the necessary skills and are proficient to ensure the safety of clients when using emergency interventions. This is also consistent with Health and Safety Code section 1180.5(b)(4).

Section 85368 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for "Admissions Agreements" in order to introduce regulations pertaining to requirements for an internal facility notice to clients regarding possible use of manual restraint or seclusion. The title is necessary for clarity and consistency with existing formatting within this Chapter.

Section 85368(a)

Specific Purpose:

This section is being adopted to cross-reference the requirements in 80068 and 85068 that require a facility's admission agreement to include a written statement specifying what emergency interventions the licensee may use.

Factual Basis:

This section is necessary to ensure a licensee is aware that they must disclose interventions to be used in the facility. The Emergency Intervention Plan shall be reviewed with and approved by the client and his/her authorized representative, if any, and a copy of the Emergency Intervention Plan shall be provided to a client and his/her authorized representative. Currently, the admissions agreement includes services provided, house rules,

and payment provisions. Therefore, it is consistent to include this written statement in the admissions agreement. These provisions meet the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "Plain English" rule drafting.

Section 85368 (a)(1) and (a)(2)

Specific Purpose:

Section 85368(a)(1) is being adopted to specify that any facility's plan regarding use of emergency interventions shall be reviewed with and approved by the client and his/her authorized representative, if any, prior to its implementation. Section 85368(a)(2) is being adopted to require that the licensee provide a copy of the emergency Intervention Plan to the client and the authorized representative, if any, at admission.

Factual Basis:

These sections are necessary to ensure that the client and/or representative(s) have an opportunity to review the contents of such a plan before implementation, enabling the client to not only evaluate and finally decide on whether such facility and/or its services are in the client's best interest, but also allows for the client and/or representative(s) to contribute beneficial information to the formation of this facility's plan.

Section 85368.2 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for "Needs and Services Plan" in order to introduce regulations pertaining to requirements for an internal facility to develop an emergency intervention plan for any reasonably expected use of manual restraint or seclusion. The title is necessary for clarity and consistency with existing formatting within this Chapter. The introductory phrase is necessary so when a "Needs and Services Plan" is prepared, Sections 80068.2 and 85068.2 need to be considered.

Sections 85368.2(a) through (a)(3)

Specific Purpose:

Section 85368.2(a) is being adopted to require the licensees who reasonably expect to use manual restraint or seclusion to develop an individual emergency intervention plan for that client. Subsection (a)(1) requires the plan to be based on the assessment required by Section 85068.2(b)(1)(G); subsection (a)(2) requires the plan to be updated as needed to ensure it meets safety of clients; and subsection (a)(3) requires the licensee to provide a copy to the client and authorized representative, if any, prior to implementation. Such assessment as well as notice to client of such is necessary to protect the health and safety of clients who are reasonably likely to experience manual restraint or seclusion.

Factual Basis:

These sections are necessary to ensure that clients who may experience manual restraint or seclusion when they are an imminent danger to self or others will receive an individual plan from the licensee. By creating an individual plan designed for the unique needs of the clients, the licensee will ensure that staff will be able to avoid unnecessary escalation of emergency intervention, worsening a medical or physical condition, or causing pain. This will also help to reduce the use of restraint and seclusion, consistent with Health and Safety Code sections 1180 and 1180.4.

Section 85368.3 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for "Manual Restraint or Seclusion Review" in order to introduce regulations pertaining to requirements for an internal facility review of each use of manual restraint or seclusion. The title is necessary for clarity and consistency with existing formatting within this Chapter.

Section 85368.3(a) and Handbook

Specific Purpose:

This section is being adopted to require licensee to ensure a debriefing occurs in accordance with Health and Safety Code section 1180.5(b). The handbook section is included for ease of reference.

Factual Basis:

This section supports the client by allowing him/her as well as parties in his/her interest to voluntarily participate and to include a representative upon request in the debriefing. This would provide the representative timely information of the use of manual restraint or seclusion and allow the client, client's representative, and staff to discuss their concerns about the incident and advocate for the client. This section is necessary to implement Health and Safety Code section 1180.5(b).

Section 85368.3(b)

Specific Purpose:

This section is being adopted to inform the licensee about additional requirements for the debriefing specified in Section 85368.3(a).

Factual Basis:

This section is necessary to specify the content of the additional requirements for the debriefing. This is necessary to ensure the debriefing is comprehensive enough to fully

understand the situation. This section meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Sections 85368.3(b)(1)

Specific Purpose:

This section is being adopted to require the licensee, as part of their debriefing of the manual restraint or seclusion, to evaluate whether facility personnel complied with the Emergency Intervention Plan, Individual Emergency Intervention Plan, facility policies and training.

Factual Basis:

This section is necessary to provide quality control which will reduce harm caused by actions not adhering to the emergency intervention plan, Individual Emergency Intervention Plan, facility policies and training and to enable the licensee to take any appropriate corrective action. This section is necessary to implement Health and Safety Code section 1180.5(b).

Section 85368.3(b)(1)(A)

Specific Purpose:

This section is being adopted to require licensees to evaluate the use of de-escalation techniques for effectiveness, and identify de-escalation techniques which are ineffective or counter-productive. This also requires the staff to discontinue any de-escalation technique that is ineffective or counter-productive if it causes an escalation of the client's behavior.

Factual Basis:

This section is necessary to ensure that any de-escalation technique that is ineffective or counter-productive is discontinued, as it would otherwise increase the risk of injury to the client. This also helps reduce and eliminate manual restraints or seclusions as required by Health and Safety Code section 1180(a). This section is consistent with Health and Safety Code sections 1180.5(b)(1) and (2).

Section 85368.3(b)(2)

Specific Purpose:

This section is being adopted to require the manual restraint or seclusion debriefing includes an evaluation of whether facility personnel utilized manual restraint or seclusion only after unsuccessful attempts in using less restrictive interventions.

Factual Basis:

This section is necessary to implement Health and Safety Code section 1180.5(b)(2) and to ensure that staff is not using unnecessary or unsafe techniques. This is consistent with subsection 85300(b) and Health and Safety Code section 1180.4(j).

Section 85368.3(b)(3)

Specific Purpose:

This section is being adopted to require the licensee to identify any precipitating factors that may have led to the incident and determine what may have been done to defuse the situation and help the client to avoid or cope with these factors.

Factual Basis:

This section will aid in helping the licensee prevent or avoid dangerous situations, which includes staff behaviors that may have contributed to the client's acting out behavior, requiring manual restraint or seclusion. This section is consistent with Health and Safety Code sections 1180.5(b)(2) and (3).

Section 85368.3(b)(4)

Specific Purpose:

This section is being adopted to require the licensee to evaluate whether the client was restrained or secluded for the minimum amount of time necessary and that the restraint or seclusion was limited to when the client was presenting an immediate danger to himself/herself or others.

Factual Basis:

This section is necessary to ensure client safety. This is consistent with Health and Safety Code sections 1180.1(a) and 1180.5(b)(4).

Section 85368.3(b)(5)

Specific Purpose:

This section is being adopted to require the licensee, the client, client representative, and/or staff to discuss circumstances and strategize for the staff and clients to avoid future incidents that would employ the use of manual restraint or seclusion.

Factual Basis:

This section is necessary to implement Health and Safety Code section 1180.5(c). This will also enhance staff's understanding and ability to utilize nonphysical emergency intervention

techniques such as crisis communication, evasive techniques, and alternative behavior, to defuse or redirect clients in emerging crisis.

Section 85368.3(c)

Specific Purpose:

This section is being adopted to require the licensee to document the findings of the review in the client's records, any modifications to the client's Needs and Services Plan, and any refusal to participate in the review by the client.

Factual Basis:

This section is necessary to demonstrate that the licensee is involving clients in the process and conducting effective debriefings and taking appropriate action to improve client safety, care and staff performance. This also implements Health and Safety Code section 1180.5(d).

Section 85369 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section titled "Medical Examination" in order to introduce regulations pertaining to requirements for medical evaluations after the use of manual restraint. The title is necessary for clarity and consistency with existing formatting within this Chapter. The introductory phrase is necessary to make sure Section 80069 is considered when applying this section.

Sections 85369(a)

Specific Purpose:

This section is being adopted to require the administrator or administrator's designee to assess and determine, after in-person communication with the client, whether there is a physical injury or suspected physical injury and whether a medical examination by an appropriate medical professional is needed.

Factual Basis:

This section is necessary to ensure the client receives needed medical care. Having the administrator or their designee conduct this assessment and determination ensures follow through and accountability. This section further implements section 1531 of the Health and Safety Code and is consistent with the requirement to ensure safety as provided by Health and Safety Code section 1180.4(j).

Sections 85369(a)(1)

Specific Purpose:

This section requires the licensee to ensure the decision and rationale whether to seek a medical examination is documented in the client's record.

Factual Basis:

This section is necessary to ensure accountability from the administrator or administrator's designee to follow through in linking clients with the needed medical services. This is consistent with the requirement to ensure safety as provided by Health and Safety Code section 1180.4(j) and meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85369(b)

Specific Purpose:

This section is being adopted to require that a suspected physical injury, or complaint of physical injury to a client as a result of an emergency intervention is immediately reported by facility staff to the administrator or administrator's designee, the licensee, and the authorized representative. It also requires the licensee to include a suspected physical injury, or complaint of physical injury to a client as a result of an emergency intervention in the report to the Department as specified in Section 85361(b).

Factual Basis:

This section is necessary to ensure accountability for the staff who witnesses or hears of a suspected/complaint of a physical injury, to alert the individuals as specified, so that appropriate action may be taken as soon as possible to provide the client with the proper care for medical needs. This further implements section 1531 of the Health and Safety Code and is consistent with CCR, Title 22, Section 80064(a)(2).

Section 85369(b)(1)

Specific Purpose:

This section is being adopted to require that any suspected serious injury shall be reported immediately to a qualified medical professional for examination.

Factual Basis:

This section is necessary to ensure appropriate action may be taken as soon as possible to provide the client with the proper care for medical needs. This meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Article 7, Section 85375 and Title

Specific Purpose/Factual Basis:

This section is being adopted to create a section title for "Seclusion Room" in order to introduce regulations pertaining to the requirements for a seclusion room, the title is necessary for clarity and consistency with existing formatting within this chapter.

Section 85375(a)

Specific Purpose:

This section is being adopted to inform licensees of the additional requirements which shall be met when a seclusion room is approved for use as emergency intervention.

Factual Basis:

This section is necessary to set forth specific requirements which shall be met by the licensee of an Adult Residential Facility when utilizing a seclusion room.

Section 85375(a)(1)

Specific Purpose:

This section is being adopted to prohibit licensees from using seclusion rooms for any purpose other than the seclusion of a client.

Factual Basis:

This section is necessary to ensure the seclusion room is used for no other competing purpose. Since the purpose of this room is to facilitate the de-escalation of a client that is dangerous to self or others, this helps ensure that no unsafe objects are in the room, such as cooking knives, sharp corners of a desk, glass tabletops, etc. This is consistent with Section 85375(c) and further implements Section 1531 of the Health and Safety Code and meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85375(a)(2)

Specific Purpose:

This section is being adopted to inform licensees of the requirement for a fire clearance allowing the use of a seclusion room prior to the use of a seclusion room.

Factual Basis:

This section is necessary to ensure the room is safe for the use of seclusion. This is consistent with Health and Safety Code section 1531.2 and 1531.3, because the Fire Marshall

is responsible for establishing the fire and panic safety standards. This is also necessary because the use of a seclusion room in some instances represents a change of use of the room from the time the facility was originally cleared by the State Fire Marshall. This regulation ensures that in the event the original fire clearance did not include the use of a seclusion room, the licensee will obtain an updated clearance. This is also consistent with Section 80020(a), which requires licensees to obtain and "maintain" a fire clearance.

Section 85375(a)(2)(A)

Specific Purpose:

This section is being adopted to inform licensees that the CDSS, once notified, shall assume the responsibility for requesting the fire clearance for the use of a seclusion room. Licensee is required to comply and maintain the updated fire clearance.

Factual Basis:

This section is necessary to allow the Department to exercise its oversight function and is consistent with current practices. This also ensures licensee's accountability to comply and maintain the updated fire clearance. This meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85375(a)(3)

Specific Purpose:

This section is necessary to inform licensees of the requirement for an inspection and approval by the CDSS prior to the use of a Seclusion Room.

Factual Basis:

This section is necessary to ensure that the seclusion room is maintained in compliance with all safety requirements before its use. This further implements Health and Safety Code section 1509 and meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85375(a)(3)(A)1. through 2.

Specific Purpose:

These sections are necessary to require licensees to submit 1. if applicable, an updated Facility Sketch showing the location of the seclusion room, and 2. a current staffing plan to the CDSS prior to the use of a Seclusion Room.

Factual Basis:

These sections are necessary to ensure that the facility is licensed for the appropriate capacity of clients, that the seclusion room is identified on the facility sketch and that there is adequate staffing to utilize a seclusion room. This further implements Health and Safety Code section 1509 and meets the "clarity" standard of the APA, Section 11349 of the Government Code, subsection (c).

Section 85375(a)(4)

Specific Purpose:

This section is being adopted to inform licensees that clients placed in seclusion rooms cannot be deprived of daily living functions.

Factual Basis:

This section is necessary to protect the basic rights accorded to clients by 80072(a)(3) which prohibits interference with daily living functions. This section clarifies that the client's right to perform daily living functions is not forfeited in an emergency.

Section 85375(a)(5) and (a)(5)(A)

Specific Purpose:

These sections are being adopted to prohibit the use of any locking or jamming device on the seclusion room door and clarify that the seclusion room door may only be held shut in a manner that allows for immediate release upon removal of a staff member's foot, hand, and/or body.

Factual Basis:

This section is necessary to prevent the door from remaining locked in the event the staff leaves the area, which in turn ensures staff supervision, protects the client's safety and personal rights provided by 80072(a)(7) Personal Rights.

Section 85375(a)(6)

Specific Purpose:

This section is being adopted to prohibit the use of a seclusion room for clients with developmental disabilities.

Factual Basis:

This section is necessary and consistent with CCR, Title 17, Division 2, Chapter 1, Subchapter 5, Article 2, Section 50515, which provides in pertinent part: No person with a developmental disability shall be placed in seclusion.

Section 85375(a)(7)

Specific Purpose:

This section prohibits licensees from using a room or another area for a seclusion that is not identified as the seclusion room in the Plan of Operations.

Factual Basis:

This section is necessary to prevent licensees from using a room or another area for a seclusion that is not identified as the seclusion room in the Plan of Operations.

Section 85375(b)

Specific Purpose:

This section requires licensees to have a control for the lighting of the seclusion room located outside the seclusion room and to allow a dimmer switch to be used if indicated in the client's Individual Emergency Intervention Plan. This section also prohibits the light in a seclusion room to be turned off completely while the room is in use.

Factual Basis:

This section is necessary to ensure the licensee is providing the appropriate lighting when the client is in the seclusion room. This also allows the licensee to provide adequate visual supervision of the client in crisis. This is consistent with Section 1531 of the Health and Safety Code.

Section 85375(c)

Specific Purpose:

This section requires the seclusion room to be free of all hazards which can be broken or used by the client to inflict injury to self or others.

Factual Basis:

This section is necessary to ensure the seclusion room contains no dangerous objects which may be a hazard to the health and safety of clients and others.

ENHANCED BEHAVIORAL SUPPORTS HOMES REGULATIONS

Chapter 11, Article 1, Section 89900(a)

Specific Purpose:

A new chapter is being adopted in the CCR titled "Enhanced Behavioral Supports Homes" which will include the regulations to follow in order to categorize a home as such. Article 1 of this new chapter will include the general requirements. Section 89900 will include the general provisions regulations. Section 89900(a) establishes a new chapter of the CCR that is responsible for governing EBSHs as well as specify other types of homes that can be licensed as an EBSH. EBSHs will be governed by Chapter 11. Chapter 5 shall also apply to an EBSH that is licensed as a Group Home. Chapter 6 shall also apply to an EBSH that is licensed as an Adult Residential Facility.

Factual Basis:

The chapter title, article title and section title are necessary for clarity and consistency within the CCR. Section 89900(a) is necessary to provide clarity to the licensee regarding what regulations will apply to what type of facility. Since this is a new category it is important that as much clarity as possible is provided for the licensing of this new category of facilities.

Section 89900(b)

Specific Purpose:

This section requires each EBSH be licensed as an Adult Residential Facility or a Group Home and be certified by the DDS in accordance with Health and Safety Code section 1567.62(a).

Factual Basis:

This adoption is necessary to ensure that all EBSHs are licensed either as an Adult Residential Facility or a Group Home and although the CDSS is the licensing authority, it is the DDS who is the certifying authority.

Section 89900(c)

Specific Purpose:

This section is necessary because it subjects placements of dual agency clients, that are placed into an EBSH that are licensed as Group Homes, to the limitations on the duration of the placement already set forth in Sections 319.2 and 319.3, 361.2(e)(9)(A), and 361.2(e)(10) of the Welfare and Institutions Code.

Factual Basis:

This section is necessary to ensure that a licensee or applicant of an EBSH that is licensed as Group Home is aware that there are already limitations in place, regarding the duration of the placement of dual agency clients that are to be followed. This is important to know so that a licensee or applicant knows the placement limitation regulations to follow for a dual agency client. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89900(c)(1)

Specific Purpose:

This provision is necessary to explain who dual agency clients are in accordance with Health and Safety Code section 1567.62(e).

Factual Basis:

This section is necessary to further clarify the definition of dual agency clients. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89900(d)

Specific Purpose:

This incorporation by reference requires that an applicant or licensee of an EBSH maintain a facility file as required by the CCR, Title 17, Section 59070.

Factual Basis:

This incorporation by reference of CCR, Title 17, Section 59070 is necessary to ensure that a licensee or applicant of an EBSH maintains a facility file.

Section 89900(d)(1) and Handbook

Specific Purpose:

This section requires that an applicant or licensee of an EBSH shall provide the facility file immediately upon request and it must be a facsimile of the original. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to clarify that a facility file shall be available in any form as long as it is available immediately upon request and be a facsimile of the original. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89900(d)(1)(A)

Specific Purpose:

This section is being adopted to ensure that when the Licensing Agency requests a physical copy, the copy is a facsimile of the original file.

Factual Basis:

This section is necessary to clarify that copies of the facility file must be exact copies of the original. This is necessary to ensure the Licensing Program Analyst is able to review accurate files. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code.

Section 89901, Title and Introductory Statement

Specific Purpose/Factual Basis:

A section title is adopted and an introductory statement to alert the users of the manual that the definition sections in 80001, 84001 and 85001 are also applicable to this chapter.

Section 89901(a)(1)

Specific Purpose:

This section is necessary to establish the definition of "Assistant Behavior Analyst" as it applies to CCR, Title 22, Chapter 11 on EBSHs. The definition adopted in Title 22 is "Assistant Behavior Analyst" means an individual who assesses the function of a behavior of a client and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the client's behavior through skill acquisition and the reduction of behavior, under supervision of a Behavior Analyst. Assistant Behavior Analysts engage in descriptive functional assessments to identify environmental factors of which behavior is a function. Assistant Behavior Analyst is recognized by the national Behavior Analyst Certification Board as a Board Certified Assistant Behavior Analyst.

Factual Basis:

This section is necessary to ensure an applicant or licensee of an EBSH is aware of the meaning of "Assistant Behavior Analyst" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(a)(2) and Handbook

Specific Purpose:

This section is necessary to establish the definition of "Authorized Consumer Representative" as it applies to CCR, Title 22, Chapter 11 on EBSHs. The definition adopted in Title 22 is that "Authorized Consumer Representative" shall have the same meaning as CCR, Title 17, Section 59050(c). An Authorized Consumer Representative shall not have the same meaning as authorized representative as defined by Section 80001(a)(7). The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to ensure an applicant or licensee of an EBSH is aware of the meaning of "Authorized Consumer Representative" as stated in CCR, Title 17, Section 59050(c) and be aware that "Authorized Consumer Representative" is not the same as "Authorized Representative" defined in Title 22, Section 80001(a)(7). This section meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(b)(1)

Specific Purpose:

This section is necessary to establish the definition of "Behavior Analyst" as it applies to CCR, Title 22, Chapter 11 on EBSHs. The definition adopted in Title 22 is "Behavior Analyst" means an individual who assesses the function of a behavior of a client and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the client's behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional assessments or functional analyses to identify environmental factors of which behavior is a function. A Behavior Analyst is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst.

Factual Basis:

This section is necessary to ensure an applicant or licensee of an EBSH is aware of the meaning of "Behavior Analyst" which meets the clarity standard of the APA, Section

11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(c)(1) and Handbook

Specific Purpose:

This section is necessary to establish the definition of "Consultant" as it applies to CCR, Title 22, Chapter 11 on EBSHs. The definition adopted in Title 22 is, "Consultant" shall have the same meaning as the CCR, Title 17, Section 59050(f) which states that "Consultant" means an individual or group eligible for vendorization in accordance with Sections 54319 and 54342. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to ensure an applicant or licensee of an EBSH is aware of the meaning of "Consultant" as stated in CCR, Title 17, Section 59050(f). This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(c)(2) and Handbook

Specific Purpose:

This section is necessary to establish that a "client" shall be considered a "consumer" and shall have the same meaning as Health and Safety Code section 1567.61(a) which states that a "consumer" or "client" means an individual who has been determined by a regional center to meet the eligibility criteria of Section 4512 of the Welfare and Institutions Code and applicable regulations and for whom the regional center has accepted responsibility. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of Health and Safety Code Section 1567.61(a) is necessary to provide context and consistency with the use of the terms "client" and "consumer" and that they shall have the same meaning when used. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(d)(1)

Specific Purpose:

This section is necessary to establish the definition of "Direct Care Staff" which means facility staff that personally provides direct supervision and special services to clients, as

defined in Title 17, Section 56002(a)(12). Section 56002(a) states that "Direct Care Staff" means facility staff, in Service Level 2, 3 and 4 facilities, who personally provide direct supervision and special services to consumers and is synonymous with "Direct Support Professionals." The term includes the licensee, the administrator, management and supervisory staff during that time when they are providing direct supervision and special services to consumers or are involved in performing program preparation functions.

Factual Basis:

This section is necessary to ensure that an applicant or licensee of an EBSH is aware of the meaning of "Direct Care Staff" as stated in CCR, Title 17, Section 56002(a). "Direct Care Staff" is not a term generally used in community care facilities licensed by the Department so it is necessary to provide this definition in order to better support the enforcement responsibilities of the Department. This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(d)(1)(A)

Specific Purpose:

This section is necessary to further clarify that direct supervision and special services include "care and supervision" as defined in Title 22, CCR, Section 80001(c)(3).

Factual Basis:

This section is necessary to ensure that direct supervision and special services include "care and supervision" as defined in Title 22, CCR, Section 80001(c)(3).

Section 89901(e)(1)

Specific Purpose:

This section is necessary to establish the definition of "Enhanced Behavioral Supports Homes" which means a facility certified by the DDS pursuant to Article 3.6 (commencing with Section 4684.80) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, and licensed by the Department as an Adult Residential Facility or a Group Home that provides 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. Also, an Enhanced Behavioral Supports Home shall have a maximum capacity of four clients.

Factual Basis:

This section is necessary to ensure that an applicant or licensee of an Enhanced Behavioral Supports Homes is aware of the meaning of "Enhanced Behavioral Supports Homes." This provision meets the clarity standard of the APA, Section 11349(c) of the Government Code,

the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(e)(2)

Specific Purpose:

This section is necessary to establish the definition of "enhanced behavioral services and supports" which means having additional staffing, supervision, and other services and supports to address a client's challenging behaviors, which are beyond what is typically available in other community living arrangements.

Factual Basis:

This section is necessary to ensure that an applicant or licensee is aware of the definition for "enhanced behavioral services and supports" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(e)(3)

Specific Purpose:

This section is necessary to establish the definition of "Emergency Intervention Training" which means an instructional curriculum provided to facility personnel regarding the techniques that may be used to prevent injury to, and maintain safety for, clients who are a danger to themselves or others, and shall emphasize positive behavioral supports and techniques that are alternatives to physical restraint and seclusion in accordance with Health and Safety Code section 1567.64.

Factual Basis:

This section is necessary to ensure that an applicant or licensee is aware of the definition for "Emergency Intervention Training" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(i)(1)

Specific Purpose:

This section is necessary to establish the definition of "Individual Behavior Supports Plan" which means the plan that identifies and documents the behavior and intensive support and service needs of a client and details the strategies to be employed and services to be provided to address those needs, and includes the entity responsible for providing those services and timelines for when each identified individual behavior support will commence.

Factual Basis:

This section is necessary to ensure that an applicant or licensee is aware of the definition of "Individual Behavior Supports Plan" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(i)(2) and Handbook

Specific Purpose:

This section is necessary to establish the definition of "Individual Behavior Supports Team" which means those individuals who contribute to the development, revision, and monitoring of the individual behavior supports plan for clients residing in an EBSH in accordance with Health and Safety Code section 1567.61. The handbook section is included for ease of reference.

Factual Basis:

This adoption is necessary to ensure that an applicant or licensee is aware of the definition of "Individual Behavior Supports Team" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(i)(3)

Specific Purpose:

This section is necessary to establish and clarify the definition of "Individual Emergency Intervention Plan" which means a written plan addressing the prevention of injury and implementation of emergency intervention techniques by the licensee that will be used with a specific client, which are in addition to and are not prohibited by, the emergency intervention techniques set forth in the facility Emergency Intervention Plan. In addition, the plan shall be developed in consultation with a Qualified Behavior Modification Professional with input from the client and if available, someone whom he or she desires to provide input in accordance with Health and Safety Code section 1180.4(a). The plan shall include client-centered problem solving strategies that diffuse and safely resolve emerging crisis situations and strategies to minimize time spent in seclusion or behavioral restraints.

Factual Basis:

This adoption is necessary to ensure that an applicant or licensee is aware of the definition of "Individual Emergency Intervention Plan" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(i)(4) and Handbook

Specific Purpose:

This incorporation by reference of CCR, Title 17, Section 59050 is necessary to adopt into regulation the definition of "Individual Program Plan" as it pertains to EBSHs. The CCR, Title 17, Section 59050(r) provides that "Individual Program Plan" (IPP) means a written plan that is developed by a regional center planning team, in accordance with the provisions of Sections 4646 and 4646.5 of the Welfare and Institutions Code. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of CCR, Title 17, Section 59050(s) is necessary to provide the context and consistency with the use of the term "Individual Program Plan" as previously established which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Section 89901(p)(1) and Handbook

Specific Purpose:

This section is necessary to establish that "Planning Team" shall have the same meaning as the CCR, Title 17, Section 59050 which refers to the planning team defined in subdivision (j) of Section 4512 of the Welfare and Institutions Code, which develops and reviews a consumer's IPP through the planning process described in Sections 4646 and 4646.5 of the Welfare and Institutions Code. The handbook section is included for ease of reference.

Factual Basis:

This incorporation by reference of CCR, Title 17, Section 59050(s) is necessary to provide the context and consistency with the use of the term "Planning Team" as previously established which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Sections 89901(q)(1) through (q)(1)(F)

Specific Purpose:

These sections are necessary to establish that a "Qualified Behavior Modification Professional" shall have a minimum two years of experience in designing, supervising, and implementing behavior modification services and be one of the following:

- (A) An Assistant Behavior Analyst certified by the national Behavior Analyst Certification Board as a Certified Assistant Behavior Analyst.

- (B) A Behavior Analyst certified by the national Behavior Analyst Certification Board as a Certified Behavior Analyst;
- (C) A Licensed Clinical Social Worker, pursuant to Business and Professions Code sections 4996-4998.5;
- (D) A Licensed Marriage and Family Therapist, pursuant to Business and Professions Code sections 4980-4989;
- (E) A psychologist, licensed by the Medical Board of California or Psychology Examining Board;
or
- (F) A licensed professional with California licensure, which permits the design of behavior modification intervention services.

Factual Basis:

This adoption of the specific components required to establish the experience criteria for a "Qualified Behavior Modification Professional" is necessary to establish the experience qualifications of a "Qualified Behavior Modification Professional."

Section 89901(r)(1)

Specific Purpose:

This section is required to establish the definition of "Registered Behavior Technician" which means an individual who is primarily responsible for the direct implementation of skill-acquisition and behavior-reduction plans, and practices under the close, ongoing supervision of a Behavior Analyst as defined in (b) or Assistant Behavior Analyst as defined in (a). The Registered Behavior Technician may also collect data and conduct certain types of assessments, but does not design intervention or assessment plans. A Registered Behavior Technician is recognized by the national Behavior Analyst Certification Board as a Board Certified Registered Behavior Technician.

Factual Basis:

This section is necessary to ensure that an applicant or licensee is aware of the definition of "Registered Behavior Technician" which meets the clarity standard of the APA, Section 11349(c) of the Government Code, the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "Plain English" rules drafting.

Article 3, Section 89918 and Introductory Statement

Specific Purpose/Factual Basis:

Article 3 is being adopted to include within it the sections on Application Procedures. Section 89918 is created to include the requirements for licensure of EBSHs. The

introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed when applying for licensure of EBSHs, but also the regulations in Sections 80018, 84018 and 85018 are to be followed.

Section 89918(a)

Specific Purpose:

This section is being adopted to reflect the requirements under Health and Safety Code section 1567.62 that a certificate of program approval by the DDS shall be a condition of licensure for the EBSHs by the CDSS. This section requires that an EBSH shall not be licensed until the Department has received the Certificate of Program Approval granted by the DDS.

Factual Basis:

The DDS was directly ordered under Health and Safety Code to evaluate a potential EBSHs and issue a certificate of Program Approval only if the program meets all of the requirements set forth in the Welfare and Institutions Code as well as Title 17 of CCR regarding such a facility and its specialized care for high maintenance developmentally delayed consumers. For the department to ensure that adequate staffing, training and services are provided for any such consumers, they rely on this role played by DDS to evaluate and approve of these services before the Department will issue a license.

Section 89918(b) and Handbook

Specific Purpose:

This section is being adopted to require that an actual copy of the DDS' Certificate of Program Approval is provided to the Department at the time of application before any license would be issued. This section incorporates what is stated in Title 17 of the CCR, section 59053, which states that "Upon approval by the Department, the Department shall issue a Certificate of Program Approval to the Enhanced Behavioral Supports Home and provide a copy of the Certificate of Program Approval to the regional center and the Department of Social Services." The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to enable the Department to easily monitor whether this crucial step of certification by DDS has taken place before the CDSS could issue any license. This procedure also enables easier access to this information if needed by enforcement.

Section 89918(c)

Specific Purpose:

This section is being adopted to require that the Licensee include a copy of the DDS' Certificate of Program Approval in the Plan of Operation, pursuant to Section 89922(c).

Factual Basis:

This additional requirement of including this copy of the Certification in the Plan of Operation again ensures easy monitoring over whether this crucial step of certification by DDS has taken place before the CDSS issues a license. This procedure also enables easier access to this information if needed for enforcement, as well as assists the licensee in incorporating or referring to any of the specific client needs or services established by the DDS, which specializes in overseeing care of the developmentally disabled.

Section 89920 Title

Specific Purpose/Factual Basis:

This section is being adopted to include the regulations on Fire Clearance for EBSHs.

Section 89920(a) and Handbook

Specific Purpose:

This section is being adopted to require that in order to be licensed by the Department; an EBSH shall meet the fire sprinkler system requirements of the CCR, Title 17, Section 59051(c). Subsection (c) specifies that there must be an operable automatic fire sprinkler system approved by the State Fire Marshal or local fire department as a condition of certification. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to ensure that the fire sprinkler system standards and requirements which will be required and enforced by the Department will mirror those required by the DDS which will certify such facilities.

Section 89922 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89922 is being adopted to include the regulations on the Plan of Operation of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed when preparing a plan of operation, but also the regulations in Sections 80022, 84022 and 85022 are to be followed.

Section 89922(a)

Specific Purpose:

This section is being adopted to require that a licensee first submit a facility program plan to the DDS, and then further submit that, after DDS' approval, to the CDSS. Further, this subsection requires that this facility program plan be included in the plan of operation to be approved by the CDSS. This is in accordance with Health and Safety Code section 1567.63

Factual Basis:

This section is necessary to enable the Department to ensure that the facility plan, and the specific requirements developed for the facility by the DDS, be not only considered by the Department in the licensing procedure, but also directly available to the Department, as a portion of the Plan of Operation, to assist in enforcement. This section is also necessary to clarify the dual agency relationship involved in licensing EBSHs facilities. Licensees must comply with both DDS and CDSS requirements to lawfully operate an EBSH facility.

Section 89922(b) and Handbook

Specific Purpose:

This section requires that the facility program plan fulfill the requirements laid out in Title 17, Section 59052. The handbook section is included for ease of reference.

Factual Basis:

The facility program plan is required by DDS and is a prerequisite for certification from that department. This section is necessary to clarify the dual agency relationship involved in licensing EBSHs facilities. The section also cross references Title 17 and thereby specifies what shall be included in the facility program plan, and by extension, the plan of operation.

Section 89922(c) and Handbook

Specific Purpose:

This section requires that the Certificate of Program Approval be included in the EBSH licensee's Plan of Operation. The handbook section is included for ease of reference.

Factual Basis:

The Certification of Program Approval is provided by DDS and is a prerequisite for licensure from CDSS. This section is necessary to specify where the Certification of Program Approval will be stored so that CDSS can readily confirm that an EBSH licensee is compliant with the dual agency requirements of this chapter.

Section 89922(d)

Specific Purpose:

This provision requires that the Facility Program Plan be included in the EBSHs licensee's facility file.

Factual Basis:

The Facility Program Plan is essential to guiding a facility's services and ensuring the safety of clients and staff. This section is necessary to clarify where the Facility Program Plan will be available for staff and CDSS agents to inspect.

Section 89940 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89940 is being adopted to include the regulations on the Denial of an Initial License of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed when denying an initial license for an EBSH, but also the regulations in Sections 80040 and 84040 are to be followed.

Section 89940(a) and Handbook

Specific Purpose:

This section states that an EBSH facility shall not have its application for licensure approved if it has not submitted a certificate of program approval, issued by DDS.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. EBSHs facilities have dual oversight from CDSS and DDS. This section clearly lays out one aspect of this dual agency relationship by stating that CDSS will not issue a license if DDS has not provided the facility with a certificate of program approval.

Article 4, Section 89942 and Introductory Statement

Specific Purpose/Factual Basis:

Article 4 is being adopted to include within it the sections on Administrative Actions. Section 89942 is adopted to include the regulations on Revocation or Suspension of a License of EBSHs. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed when revoking or suspending a license of an EBSH, but also the regulations in Sections 80042 and 84142 are to be followed.

Section 89942(a) and Handbook

Specific Purpose:

This section states that an EBSH facility shall have its license revoked if DDS decertifies the facility as an EBSH. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. EBSHs facilities have dual oversight from CDSS and DDS. This section clearly lays out the overlap in the dual agency relationship by stating that CDSS will revoke a license if DDS revokes certification.

Article 6, Section 89964 and Introductory Statement

Specific Purpose/Factual Basis:

Article 6 is being adopted to include within it the sections on Continuing Requirements. Section 89964 is adopted to include the regulations on Administrator Certification and Qualifications of an administrator of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed when certifying an EBSH administrator or verifying his/her qualifications, but also the regulations in Sections 80064, 84064 and 85064 are to be followed.

Section 89964(a)

Specific Purpose:

This provision states that an administrator of an EBSH facility shall satisfy the qualification laid out in Title 17, Section 59060.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. It clarifies that administrators are subject to additional requirements in Title 17, Section 59060. The provisions are then laid out in the proceeding sections. Administrators are in charge of running EBSHs facilities. Thus, their qualifications are an important aspect of ensuring that facilities comply with the law when providing care to clients. These additional qualifications are specific to the client population that EBSHs will serve and include: (1) Have a minimum of 2 years of prior experience providing direct supervision to individuals with developmental disabilities; and be one of the following, (2) a Registered Behavior Technician, or (3) a licensed psychiatric technician, or (4) a Qualified Behavior Modification Professional.

Section 89964(a)(1)

Specific Purpose:

This section states that an administrator of an EBSH facility shall have a minimum of 2 years of prior experience providing direct supervision to individuals with developmental disabilities.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. This provision specifically informs licensees of one minimum qualification to serve as the administrator of an EBSH facility. Administrators are in charge of running EBSHs facilities. Thus, their qualifications are an important aspect of ensuring that facilities comply with the law when providing care to clients.

Section 89964(a)(2)

Specific Purpose:

This section states that an administrator of an EBSH facility may meet one qualification requirement by becoming a Registered Behavior Technician.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. This provision specifically informs licensees of one way that an administrator may fulfill one qualification requirement. Administrators are in charge of running EBSHs facilities. Thus, their qualifications are an important aspect of ensuring that facilities comply with the law when providing care to clients.

Section 89964(a)(3)

Specific Purpose:

This section states that an administrator of an EBSH facility may meet one qualification requirement by becoming a licensed psychiatric technician.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. This provision specifically informs licensees of one way that an administrator may fulfill one qualification requirement. Administrators are in charge of running EBSHs facilities. Thus, their qualifications are an important aspect of ensuring that facilities comply with the law when providing care to clients.

Section 89964(a)(4)

Specific Purpose:

This section states that an administrator of an EBSH facility may meet one qualification requirement by becoming a Qualified Behavior Modification Professional.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. This provision specifically informs licensees of one way that an administrator may fulfill one qualification requirement. Administrators are in charge of running EBSHs facilities. Thus, their qualifications are an important aspect of ensuring that facilities comply with the law when providing care to clients.

Section 89965 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89965 is being adopted to include the regulations on the Personnel Requirements of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed on the personnel requirements of an EBSH, but also the regulations in Sections 800650, 84065 and 85065 are to be followed.

Section 89965(a)

Specific Purpose:

This section states that the licensee of an EBSH facility is responsible for ensuring that each direct care lead staff meets specific qualifications.

Factual Basis:

This section is necessary to satisfy the specificity and clarity standards of the APA. This clearly and specifically informs the reader that licensees are responsible for ensuring that their direct care lead staff meets the requirements laid out in this section. Placing this responsibility on the licensee is relevant to the enforcement of these requirements against licensees.

Section 89965(a)(1)

Specific Purpose:

This section states that a direct care lead staff person at an EBSH facility shall have one year prior experience providing direct care to individuals with developmental disabilities.

Factual Basis:

This section is necessary to satisfy the specificity standards of the APA. This provision specifically informs licensees of a qualification requirement for direct care lead staff. Direct care lead staff is personally responsible for implementing and supervising care and so their qualifications are an important aspect of ensuring client health and safety.

Section 89965(a)(1)(A)

Specific Purpose:

This section requires that each direct care lead staff person at an EBSH facility may meet one qualification requirement by becoming a Registered Behavior Technician within six months of initial employment.

Factual Basis:

This section is necessary to satisfy the specificity standards of the APA. This provision specifically informs licensees of one way that direct care lead staff may fulfill their qualification requirements. Direct care lead staff is personally responsible for implementing and supervising care and so their qualifications are an important aspect of ensuring client health and safety.

Section 89965(a)(1)(B)

Specific Purpose:

This section requires that each direct care lead staff person at an EBSH facility may meet one qualification requirement by being a licensed psychiatric technician.

Factual Basis:

This section is necessary to satisfy the specificity standards of the APA. This provision specifically informs licensees of one way that direct care lead staff may fulfill their qualification requirements. Direct care lead staff is personally responsible for implementing and supervising care and so their qualifications are an important aspect of ensuring client health and safety.

Section 89965(a)(1)(C)

Specific Purpose:

This section requires that each direct care lead staff person at an EBSH facility may meet one qualification requirement by being a Qualified Behavior Modification Professional.

Factual Basis:

This section is necessary to satisfy the specificity standards of the APA. This provision specifically informs licensees of one way that direct care lead staff may fulfill their qualification requirements. Direct care lead staff is personally responsible for implementing care and so their qualifications are an important aspect of ensuring client health and safety.

Sections 89965(b) and (b)(1)

Specific Purpose:

These sections allow that each direct care staff person at an EBSH facility may meet one qualification requirement by having six months of prior experience providing direct care to individuals with developmental disabilities.

Factual Basis:

These sections are necessary to satisfy the specificity standards of the APA. These provisions specifically inform licensees of one way that direct care staff may fulfill their qualification requirements. Direct care staff is personally responsible for implementing care and so their qualifications are an important aspect of ensuring client health and safety.

Section 89965(b)(2)

Specific Purpose:

This section allows that each direct care staff person at an EBSH facility may meet one qualification requirement by becoming a Registered Behavior Technician within twelve months of initial employment.

Factual Basis:

This section is necessary to satisfy the specificity standards of the APA. This provision specifically informs licensees of one way that direct care staff may fulfill their qualification requirements. Direct care staff is personally responsible implementing care and so their qualifications are an important aspect of ensuring client health and safety.

Section 89965(c)

Specific Purpose:

This section requires that, at minimum, one direct care lead staff person and one direct care staff person shall be on duty at all times when a client is under the supervision of the EBSH facility.

Factual Basis:

EBSHs facilities are designed for clients who require enhanced supports. This provision is necessary to meet the specificity standards of the APA while ensuring that clients receive the support they need from facility staff.

Section 89965(d)

Specific Purpose:

This section requires that a direct care staff person who has not completed on-site training shall be supervised by a fully trained direct care lead staff person while caring for clients and shall not be left alone with clients.

Factual Basis:

This section ensures that at least one staff member with proper training is present to assist when clients are receiving care. This provision meets the specificity standards of the APA while protecting the safety of clients and staff.

Section 89965(e)

Specific Purpose:

This section requires the administrator of an EBSH facility to assign a qualified behavior modification specialist to each client and that each client shall receive a minimum of 6 hours of direct time for behavior assessments and intervention methods.

Factual Basis:

This section is necessary to meet the specificity standards of the APA and to ensure the clients receive individualized attention aimed at improving the client's quality of life and fostering independence.

Section 89965(f)

Specific Purpose:

This section requires an administrator to be on duty a minimum of 20 hours per week at all EBSHs facilities.

Factual Basis:

This section is necessary to ensure that clients and staff is being supervised by an administrator, who is largely responsible for maintaining the licensing standards set forth in this chapter.

Section 89965(g)

Specific Purpose:

This section requires the administrator of an EBSH facility to ensure provision of 6 consultant hours per month per client towards meeting individual client service needs.

Factual Basis:

This section is necessary to ensure the clients receive individualized treatment that safely maximizes their independence in facilities licensed by the department.

Section 89965(h)

Specific Purpose:

This section requires that direct care staff at EBSHs facilities receive 32 hours of training within the first 40 hours of employment, including topics applicable to the facilities licensure type.

Factual Basis:

This section is necessary to fulfill the specificity standards of the APA and ensure that direct care staff is trained in a timely fashion. Expeditious training is necessary to ensure that care is always being provided by knowledgeable and qualified direct care staff.

Section 89965(h)(1)

Specific Purpose:

This section requires that direct care staff is trained in the specialized needs of each of the clients.

Factual Basis:

This section is necessary to ensure that direct care staff is familiar with the clients they will be serving. It is consistent with the clarity and specificity standards of the APA.

Section 89965(h)(2)

Specific Purpose:

This section requires that direct care staff in EBSHs facilities comply with all client rights and protections contained in Title 17, Sections 50500-50550, and Title 22.

Factual Basis:

This section is necessary to meet the specificity standards of the APA by directing licensees to regulations that articulate client rights and protections. Client rights and protections are essential to fulfilling the department's mission to secure the health and safety of clients.

Section 89965(h)(2)(A)

Specific Purpose:

This section requires that direct care staff in EBSHs facilities licensed as Group Homes receive training on client rights located at Section 84072.

Factual Basis:

This section is necessary to ensure that direct care staff understand and respect the rights of clients in Group Home facilities licensed by the department. Client rights are essential to fulfilling the department's mission to secure the health and safety of clients.

Section 89965(h)(2)(B)

Specific Purpose:

This section requires that direct care staff in EBSHs facilities licensed as ARFs receive training on the client rights located at Sections 85072 and 80072.

Factual Basis:

This section is necessary to ensure that direct care staff understand and respect the rights of clients in ARF facilities licensed by the department. Client rights are essential to fulfilling the department's mission to secure the health and safety of clients.

Section 89965(h)(3)

Specific Purpose:

This section requires that direct care staff receive training on the facility program plan.

Factual Basis:

This section is necessary to ensure direct care staff is familiar with the facility program plan and that it properly reflects the care being provided to clients at the facility.

Section 89965(h)(4)

Specific Purpose:

This section requires that direct care staff receive training on the implementation of clients Individual Program Plans.

Factual Basis:

This section is necessary to ensure direct care staff is familiar with and properly implement the clients Individual Program Plans. This is an important document that guides the care of clients.

Section 89965(h)(5)

Specific Purpose:

This section requires that direct care staff receive health and emergency training.

Factual Basis:

This section is necessary to ensure direct care staff is equipped to ensure client safety and helps meet the specificity standards of the APA.

Section 89965(h)(6)

Specific Purpose:

This section requires that direct care staff receive disaster and mass casualty training.

Factual Basis:

This section is necessary to ensure client safety in the case of an emergency. Furthermore, this provision meets the specificity standards of the APA by directing licensees to Section 80023 and adding that the training shall include evacuation and exit procedures when secured perimeters/delayed egress devices are in use.

Section 89965(i)

Specific Purpose:

This section requires direct care staff to obtain 16 hours of training specific to emergency intervention.

Factual Basis:

Emergency interventions, while sometimes necessary, should be used as a last resort and in the least restrictive manner possible. Training is necessary to implement these techniques correctly and in a way that ensures the health and safety of clients.

Section 89965(i)(1)

Specific Purpose:

This section requires direct care staff at ARF facilities to complete specific training requirements on emergency interventions prior to utilizing these techniques on clients.

Factual Basis:

This section is necessary to alert ARF licensees to relevant emergency intervention training requirements, protect client health and safety, and satisfy the specificity standards of the APA.

Section 89965(i)(2)

Specific Purpose:

This section requires direct care staff at Group Home facilities to complete specific training requirements on emergency interventions prior to utilizing these techniques on clients.

Factual Basis:

This section is necessary to alert Group Home licensees to relevant emergency intervention training requirements, protect client health and safety, and satisfy the specificity standards of the APA.

Section 89965(j)

Specific Purpose:

This section requires that licensees ensure that direct care staff shall not employ emergency intervention techniques until they successfully complete emergency intervention training as required by the applicable facility type's regulations.

Factual Basis:

This section is necessary to hold licensees liable for failing to have staff adequately trained. This provides specificity consistent with the APA and allows the department to take action against the licensee for failing to ensure direct care staff is properly trained in emergency intervention techniques.

Section 89965(k)

Specific Purpose:

This section requires that direct care staff be certified in first aid and cardiopulmonary resuscitation training.

Factual Basis:

This section is necessary because first aid and cardiopulmonary resuscitation training are important to ensure the health and safety of clients in the case of a medical emergency.

Section 89965(k)(1)

Specific Purpose:

This section requires that direct care staff maintain current certifications in first aid and cardiopulmonary resuscitation and specifies that the administrator shall be responsible for maintaining the certifications in the staff's personnel records.

Factual Basis:

This section is necessary to ensure that staff can care for clients in the case of a medical emergency by requiring that certifications be current. This provision also meets the APA's specificity standards by instructing administrators to maintain proof of certification in personnel records.

Section 89965(l) and Handbook

Specific Purpose:

This section requires that direct care staff attend competency based training prior to or within one year of starting work at an EBSH as required by Title 17, Section 59063(e). The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to satisfy specificity standards of the APA and to ensure that EBSHs staff is trained in a timely fashion. Training helps ensure that clients are given adequate care.

Section 89965(m)

Specific Purpose:

This section requires direct care staff to complete a minimum of 20 hours of continuing education on an annual basis covering, but not be limited to, the subjects specified in Section 89965(h).

Factual Basis:

This section is necessary to inform applicants and Licensees of their training requirements and to satisfy the specificity standards of the APA and to ensure that EBSHs staff is trained properly. Training helps ensure that clients are given adequate care.

Section 89965(m)(1)

Specific Purpose:

This section specifies that direct care staff in EBSHs licensed as Group Homes, can have 10 hours of continuing education required in Section 84065(j) count towards the hours required in Section 89965(h).

Factual Basis:

This section is necessary for clarity and consistency to inform direct care staff that 10 hours of continuing education required in Section 84065(j) count towards the hours required in Section 89965(h). This is also necessary to satisfy the specificity standards of the APA and to ensure that EBSHs staff is trained properly. Training helps ensure that clients are given adequate care.

Section 89965(m)(2)

Specific Purpose:

This section specifies that additional continuing education shall be required as necessary, to ensure the continued health and safety of each client.

Factual Basis:

This section is necessary for clarity and consistency to inform direct care staff that additional continuing education is required as necessary, to ensure the continued health and safety of each client. This is also necessary to satisfy the specificity standards of the APA and to ensure that EBSHs staff is trained properly. Training helps ensure that clients are given adequate care.

Section 89965(m)(3)

Specific Purpose:

This section specifies that successful completion of the competency-based training and passage of the competency test required by the CCR, Title 17, Section 59063(e) shall satisfy the direct care staff continuing education requirements specified in Sections 89965(m) through (m)(2) for the year in which the training is satisfactorily completed.

Factual Basis:

This section is necessary for clarity and consistency to inform direct care staff that successful completion of the competency-based training and passage of the competency test required by the CCR, Title 17, Sections 59063(e) shall satisfy the direct care staff continuing education requirements specified in Sections 89965(m) through (m)(2) for the year in which the training is satisfactorily completed. This is also necessary to satisfy the specificity standards of the APA and to ensure that EBSHs staff is trained properly. Training helps ensure that clients are given adequate care.

Section 89965(n)

Specific Purpose:

This section requires that direct care staff members renew their emergency intervention training annually.

Factual Basis:

This section is necessary to meet the specificity standards of the APA and ensure that staff is regularly trained on emergency intervention techniques.

Section 89968.1 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89968.1 is being adopted to include the regulations for the Intake Admission Procedures an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed on the intake admission procedures of an EBSH, but also the regulations in Sections 84168.1 and 85068.1 are to be followed.

Section 89968.1(a)

Specific Purpose:

This section requires that all EBSHs facilities complete an initial assessment of a client prior to or on the day of the client's admission.

Factual Basis:

An initial assessment is necessary to collect information about clients at the time of admission. The time parameters are necessary to meet the specificity standards of the APA.

Section 89968.1(a)(1)

Specific Purpose:

This section requires that a client's initial assessment at EBSHs facilities licensed as ARFs be completed in accordance with Section 85068.2(b)(1)(G).

Factual Basis:

This section provision is necessary to meet the specificity standards of the APA. The referenced section of the ARF regulations provides licensees with a list of the type of information necessary to complete a compliant initial assessment.

Section 89968.1(a)(2) and Handbook

Specific Purpose:

This section requires that a client's initial assessment at EBSHs facilities licensed at Group Homes be completed in accordance with Health and Safety Code section 1180.4. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. The referenced section of the Health and Safety Code provides licensees with a list of the type of information necessary to complete a compliant initial assessment.

Section 89968.1(b)

Specific Purpose:

This section requires that a client's Individual Behavior Supports Plan be completed within seven days of his or her admission.

Factual Basis:

This section is necessary to ensure that Individual Behavior Supports Plans are completed in a timely fashion. The plan must be completed soon after admission to ensure that a client's care is individualized and meets his or her needs.

Section 89968.2 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89968.2 is being adopted to include the regulations on the Needs and Services Plan to be done for the clients of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be

followed on the needs and services plan of the clients of an EBSH, but also the regulations in Sections 80068.2, 84068.2 and 85068.2 are to be followed.

Section 89968.2(a)

Specific Purpose:

This section specifies that the facility administrator is responsible for coordinating the development and subsequent updating of each client's Individual Behavior Supports Plan.

Factual Basis:

Individual Behavior Support Plans are an integral part of providing services to clients. This section is necessary to ensure that the appropriate staff, with adequate qualifications and experience, are developing and updating this document.

Section 89968.2(b) and Handbook

Specific Purpose:

This section requires that EBSHs licensees maintain an individual behavior supports plan as specified in Title 17, Division 2, Chapter 3, Subchapter 24, Section 59054(d) and (e). The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to meet the specificity standards of the APA and clearly emphasize the requirements of Title 17 as they apply to EBSHs facilities under the dual agency relationship between DDS and CDSS.

Section 89968.2(c)

Specific Purpose:

This section requires the licensee of an Enhanced Behavioral Supports Home licensed as a Group Home to develop an Individual Emergency Intervention Plan for the client.

Factual Basis:

This section is necessary because the needs of EBSHs clients are different than those of clients at other facilities. EBSHs clients generally require a high level of supportive services which may include emergency intervention techniques. Thus, EBSHs licensees must compose an Individual Emergency Intervention Plan for every client. This provision is further necessary to clarify that this requirement differs from regulations covering non-EBSHs facilities, at which Individual Emergency Intervention Plans are only required if a client will likely require emergency intervention techniques as part of his or her care and supervision.

Section 89968.2(c)(1)

Specific Purpose:

This section requires that the Individual Emergency Intervention Plan be based on a client's initial assessment and provides that in the event the provisions of the Individual Emergency Intervention Plan are addressed in the Individual Behavior Supports Plan required by California Code of Regulations, Title 17, Section 59054, the licensee shall not be required to complete a separate or additional Individual Emergency Intervention Plan for the client.

Factual Basis:

This section is necessary to provide licensees with specific instructions on what the Individual Emergency Intervention Plan should be based upon. This provision ensures licensees do not complete a separate or additional Individual Emergency Intervention Plan for the client if the provisions of the Individual Emergency Intervention Plan are addressed in the Individual Behavior Supports Plan. The section is necessary to meet the specificity standards of the APA.

Section 89968.2(d)

Specific Purpose:

This section requires that Enhanced Behavioral Supports Homes licensed as an Adult Residential Facility develop an Individual Emergency Intervention Plan for the client.

Factual Basis:

This section is necessary because the needs of EBSHs clients are different than those of clients at other facilities. EBSHs clients generally require a high level of supportive services which may include emergency intervention techniques. Thus, EBSHs licensees must compose an Individual Emergency Intervention Plan for every client. This provision is further necessary to clarify that this requirement differs from regulations covering non-EBSHs facilities, at which Individual Emergency Intervention Plans are only required if a client will likely require emergency intervention techniques as part of his or her care and supervision.

Section 89968.2(d)(1)

Specific Purpose:

This section requires that the Individual Emergency Intervention Plan be based on a client's initial assessment and provides that in the event the provisions of the Individual Emergency Intervention Plan are addressed in the Individual Behavior Supports Plan required by California Code of Regulations, Title 17, Section 59054, the licensee shall not be required to complete a separate or additional Individual Emergency Intervention Plan for the client.

Factual Basis:

This section is necessary to provide licensees with specific instructions on what the Individual Emergency Intervention Plan should be based upon. This provision ensures licensees use information available at the time of client intake when writing these plans, rather than relying on potentially outdated information. This provision also ensures licensees do not complete a separate or additional Individual Emergency Intervention Plan for the client if the provisions of the Individual Emergency Intervention Plan are addressed in the Individual Behavior Supports Plan. The section is necessary to meet the specificity standards of the APA.

Section 89970 Title and Introductory Statement

Specific Purpose/Factual Basis:

Section 89970 is being adopted to include the regulations on the Client Records of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed on the client records of an EBSH, but also the regulations in Sections 80070, 84070 and 85070 are to be followed.

Section 89970(a)

Specific Purpose:

This section specifies what documents must be kept in a client's record.

Factual Basis:

The following provisions clarify for licensees what information must be contained in a client record. They are necessary to meet the specificity standards of the APA. They also ensure that information on clients is readily available for facilities and for licensing inspectors. This information helps facilities care for clients and helps regulators ensure that clients' care is comprehensive and consistent with the individual needs of each client.

Section 89970(a)(1)

Specific Purpose:

This section requires that a medical assessment be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. Medical information is necessary to provide clients with quality care and must be available for inspection by licensing authorities.

Section 89970(a)(2)

Specific Purpose:

This section requires that an Individual Behavior Supports Plan, updated as necessary, be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. This information is necessary to provide clients with quality care and must be available for inspection by licensing authorities.

Section 89970(a)(3)

Specific Purpose:

This section requires that the Individual Emergency Intervention Plan be, updated as necessary, unless the Individual Behavioral Supports Plan meets the requirements of Section 89968.2(c)(1) or (d)(1), included in a client's record.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. The Individual Emergency Intervention Plan or the Individual Behavioral Supports Plan that meets the requirements of Section 89968.2(c)(1) or (d)(1) is necessary to provide clients with quality care and must be available for inspection by licensing authorities.

Section 89970(a)(4)

Specific Purpose:

This section requires that emergency contact information be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. Emergency contact information is necessary to make sure the appropriate individuals can be notified in case of emergency and must be available for inspection by licensing authorities.

Section 89970(a)(5)

Specific Purpose:

This section requires that the Individual Program Plan be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity and clarity standards of the APA. Individual Program Plans are necessary to provide clients with quality care and must be available for inspection by licensing authorities.

Section 89970(a)(6)

Specific Purpose:

This section requires that incident reports be included in a client's record as it is stipulated in CCR Title 17, Section 54327.

Factual Basis:

This section is necessary to meet the specificity standards of the APA. Incident reports are necessary to provide clients with quality care and must be available for inspection by licensing authorities who will inspect incident reports and use the information provided on the reports to investigate potential abuse and noncompliance.

Section 89970(a)(7)

Specific Purpose:

This section requires that data collection, including progress notes, professional/consultant visits, and interventions/outcomes be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity and clarity standards of the APA. Data collection is necessary to provide clients with quality care and must be available for inspection by licensing authorities.

Section 89970(a)(8)

Specific Purpose:

This section requires that a record of medications administered, including the initials of staff providing assistance, be included in a client's record.

Factual Basis:

This section is necessary to meet the specificity and clarity standards of the APA. Medication records are necessary to keep track of client medication intake and the staff who was responsible for providing assistance, if any. This provision is necessary to ensure clients are provided with quality care.

Article 7, Section 89987 Title and Introductory Statement

Specific Purpose/Factual Basis:

Article 7 is being adopted to include within it the regulations on Physical Environment of an EBSH. Section 89987 is being adopted to include the regulations on Buildings and Grounds of an EBSH. The introductory statement is being adopted to alert anyone referencing this regulation that not only the regulations in this section are to be followed on the buildings and grounds of an EBSH, but also the regulations in Sections 80087, 84087 and 85087 are to be followed.

Section 89987(a) and Handbook

Specific Purpose:

This section requires that residents in EBSHs facilities are provided with a private bedroom as required in CCR Title 17, Section 59051. The handbook section is included for ease of reference.

Factual Basis:

This section is necessary to ensure consistent policy concerning EBSHs facilities. CCR Title 17 regulations require that EBSHs facilities provide residents with private beds. EBSHs facilities are subject to both Title 17 and Title 22 as part of the dual oversight responsibilities of DDS and CDSS.

Article 10 and Section 89990 Title

Specific Purpose/Factual Basis:

Article 10 is being adopted to include within it the regulations on Emergency Interventions of an EBSH. Section 89990 is being adopted to include the regulations on the Provisions for Emergency Interventions on an EBSH.

Section 89990(a)

Specific Purpose:

This section requires that an EBSH facility licensed as an ARF comply with CCR Title 22, Chapter 6, Subchapter 1 unless otherwise specified.

Factual Basis:

This section is necessary to clarify that an EBSH facility licensed as an ARF must comply with specified regulations when using emergency interventions. This section directs the licensee to the appropriate regulations governing the use of emergency interventions in such facilities.

Section 89990(b)

Specific Purpose:

This section requires that an EBSH facility licensed as a Group Home must develop an Emergency Intervention Plan and have it approved by the Department prior to using emergency intervention techniques described in CCR Title 22, Chapter 6, Subchapter 1.

Factual Basis:

This section is necessary to clarify the difference between ARF and Group Home requirements with respect to the use of emergency interventions. This section directs an EBSH facility licensed as a Group Home to the appropriate regulations governing the use of emergency interventions in such facilities.

Section 89990(c)

Specific Purpose:

This section allows the CDSS, when it has determined that urgent action is necessary to protect the health and safety of clients, to notify DDS. The DDS will in turn take action within 24 hours which may include removal of the client from the EBSH facility.

Factual Basis:

The purpose of this provision is to ensure communication between CDSS and DDS in their dual oversight of EBSHs facilities. This channel of communication and the authority by DDS to take action within 24 hours helps ensure client health and safety.

b) Identification of Documents Upon Which Department Is Relying

SB 130 (Chapter 750, Statutes of 2003) sections 1 and 2
SB 856 (Chapter 30, Statutes of 2014) sections 4, 5 and 6
AB 1472 (Chapter 25, Statutes of 2012) sections 3 and 4
SB 82 (Chapter 23, Statutes of 2015) section 3
AB 1606 (Chapter 26, Statutes of 2016) sections 1 and 9

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations only impact licensees that make the business decision to admit the clients which would require these regulatory provisions. There is no requirement for licensees to work with clients that present behavioral issues.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives because the Legislature, through the above mentioned bills, mandate the Department's oversight of these facilities and no alternatives were proposed.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the licensees that make the business decision to serve clients who present behavioral issues. There is no requirement for licensees to work with clients who present behavioral issues.

The provisions specific to the use of secured perimeters are focused on the client protections and the established fire clearance requirements that a Licensee must ensure in order to establish secured perimeters around a facility. In addition, the requirement of a Licensee obtaining Department approval for the secured perimeter is not a new process, but part of the same plan of operation process that is required already for all Licensees of community care facilities. Essentially, these provisions do not require a Licensee to build a secured perimeter around their facility and therefore there are no associated costs to the provisions established in this regulation package on secured perimeters.

The provisions specific to the use of emergency interventions also do not have an associated cost as the focus is on client protections, ensuring safe practices, requiring specific details in emergency intervention documentation and reports to the standard record keeping processes and training specific to emergency intervention. The training required for these regulations is already required for ARFs that serve developmentally disabled clients per Section 4684.86 of the Welfare and Institutions Code. In addition, the emergency intervention training provisions are a pre-existing requirement for all ARFs per Section 1180 of the Health and Safety Code. Essentially the proposed regulations on emergency intervention simply centralize and make more specific the existing requirements for ARFs into the Title 22 regulations, which create ease of use for the Department and the public, but do not create any new costs to Licensees that may choose to implement emergency intervention plans.

Lastly, for the provisions specific to Enhanced Behavioral Supports Homes, any new costs specific to this subcategory of ARFs are being covered by DDS as established in their Title 17, Section 59072 regulations on rates. Rates established by DDS will offset any

increase in expenses a Licensee incurs as a result of operating an Enhanced Behavioral Supports Home. The provisions in these Title 22 regulations do not create any new cost outside of what has been created by the Title 17 regulations and therefore have no adverse economic impact on the businesses.

f) Economic Impact Assessment

In accordance with Government Code section 11346.3(b), the CDSS has made the following assessments regarding the proposed Enhance Behavioral Supports Homes emergency regulations. The CDSS has made an initial determination that there is no impact on California businesses as a result of filing these regulations because these regulations are only applicable to the licensees that make the business decision to serve clients that present behavioral issues.

This analysis is intended to be a tool or baseline to establish that these regulatory measures are the most cost-effective to affected California enterprises and equally effective in implementing the statutory policy or other provision of law.

Creation or Elimination of Jobs Within the State of California

The proposed regulations include changes to the Adult Residential Facilities (ARF) and Group Home (GH) regulations by adopting regulations to implement the above mentioned statutes and provide the guidance necessary for licensees to assist clients in need of behavioral supports. In addition, the proposed regulations make technical, conforming changes, such as adding and renumbering of sections and amending cross references as necessary.

The proposed amendments will neither create nor eliminate jobs in the State of California. The justification for this statement is that the proposed regulations fine tune the existing regulations for ARFs and GHs. The proposed regulations only pertain to the licensees that make the business decision to serve clients that present behavioral issues. Therefore, CDSS has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed regulations include changes to ARF and GH regulations by adopting health and safety standards which will ensure the safety of clients and staff in licensed facilities and support the closure of the Developmental Centers by providing needed beds in the community. In addition, the proposed regulations makes technical, conforming changes, such as adding and renumbering of sections and amending cross references as necessary.

The proposed amendments will neither create nor eliminate existing businesses within the State of California. The justification for this statement is that the proposed regulations implement the above mentioned bills in support of the closure of the Developmental Centers.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The proposed amendments will neither expand nor eliminate businesses in the State of California. The justification for this statement is that the proposed regulations are based on the above mentioned bills.

Benefits of the Regulations

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions Code section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to services and supports in the least restrictive environment. With the reduced reliance on restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers.

To continue the development of alternative living arrangements, SB 856 (Chapter 30, Statutes of 2014) requires the Department of Social Services to license Enhanced Behavioral Supports Homes. The benefits of the proposed regulation include enabling supportive housing for clients leaving the Developmental Centers where their health and safety will be protected.

The documents relied upon in proposing this regulatory action are, SB 130 (Chapter 750, Statutes of 2003) sections 1 and 2; SB 856 (Chapter 30, Statutes of 2014) sections 4, 5, 6; AB 1472 (Chapter 25, Statutes of 2012) sections 3 and 4; SB 82 (Chapter 23, Statutes of 2015) section 3; and AB 1606 (Chapter 26, Statutes of 2016) sections 1 and 9.

g) Benefits Anticipated from Regulatory Action

This regulatory action which amends ARF and GH regulations as authorized by SB 856 (Chapter 30, Statutes of 2014), SB 130 (Chapter 750, Statutes of 2003), AB 1472 (Chapter 25, Statutes of 2012), SB 82 (Chapter 23, Statutes of 2015), and AB 1606 (Chapter 26, Statutes of 2016) will help support the health and safety of clients in facilities and consistent with their assessments, will help them move to a less institutionalized living arrangement.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.